

EXHIBIT A

ECONOMIC DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE VILLAGE OF HOFFMAN ESTATES

AND

SEARS, ROEBUCK AND CO.

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ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT is made by and entered into on the ____ day of _____, 1990, by and between the VILLAGE OF HOFFMAN ESTATES, an Illinois home rule municipal corporation located in Cook and Kane Counties, Illinois, and SEARS, ROEBUCK AND CO., a New York corporation.

DEFINITIONS

The following words and terms used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning:

ACQUISITION CONTRACTS The sale/purchase contracts which have been executed by Developer, or Developer's nominee, that provide for the Developer's acquisition of the Subject Property. A summary of the Acquisition Contracts is attached hereto as Exhibit "A".

ACT The Economic Development Area Tax Increment Allocation Act, Ill.Rev.Stat. (1989) Ch.67 1/2,SS1001 et seq., as amended from time to time.

AGREEMENT This Economic Development Agreement and all exhibits attached hereto, as the same may be amended from time to time by the Parties in accordance with the terms hereof.

ALLOCATED TAX INCREMENT REVENUE AMOUNTS The amounts of Tax Increment Revenues which are to be paid to the Village and the other Taxing Districts, consisting of the "Phase I Allocated Tax Increment Revenue Amounts" set forth on Exhibit "B" attached hereto, and the "Phase II Allocated Tax Increment Revenue Amounts," as determined by using the percentages set forth on Exhibit "C" attached hereto.

AMENDMENT TO THE ANNEXATION AGREEMENTS Such amendment to the Beverly Annexation Agreement and the Nederlander Annexation Agreement as the Parties may execute in order to further the development of the Subject

44 Property. The Amendment to the Annexation
45 Agreements may also constitute the annexation
46 agreement for the portion of the Subject
47 Property that is commonly described as the
48 "Studz Parcel".
49
50 **BEVERLY** That certain annexation agreement dated
51 **ANNEXATION** January 19, 1981 and approved by the Village
52 **AGREEMENT** by Village Ordinance No. 1248-1981, as
53 amended.
54
55 **BOARD OF TRUSTEES** The Board of Trustees of the Village holding
56 office from time to time.
57
58 **BONDS** The Revenue Bonds and the General Obligation
59 Bonds.
60
61 **CORPORATE** The President and Board of Trustees of the
62 **AUTHORITIES** Village holding office from time to time.
63
64 **DEPARTMENT** The State's Department of Commerce and
65 Community Affairs.
66
67 **DESIGNATED** The Village Manager of the Village holding
68 **OFFICER** office from time to time.
69
70 **DEVELOPER** Sears, Roebuck and Co., a New York
71 corporation.
72
73 **DEVELOPER** The advances made to or on behalf of the
74 **ADVANCES** Village by the Developer in order to pay
75 Project Costs, which advances shall be
76 reimbursed to the Developer by the Village, in
77 accordance with the provisions of this
78 Agreement and the Act.
79
80 **DEVELOPMENT** The Phase I Development and Phase II
81 Development.
82
83 **ECONOMIC** The economic development plan dated August 4,
84 **DEVELOPMENT** 1989, entitled "Hoffman Estates Economic
85 **PLAN** Development Project Area Plan and Project"
86 which constitutes the comprehensive program of
87 the Village for the Project Area, as approved
88 by the Corporate Authorities by Village
89 Ordinance No. 2106-1989, adopted on September
90 11, 1989, together with any amendments
91 thereto.
92
93 **ECONOMIC** The economic development project approved by
94 **DEVELOPMENT** the Corporate Authorities by Village Ordinance
95 **PROJECT** No. 2106-1989, adopted on September 11, 1989,

96 in furtherance of the objectives of the
97 Economic Development Plan.
98
99 **FUND** The Special Tax Allocation Fund.
100
101 **GENERAL** Those general obligation bonds which the
102 **OBLIGATION** Village may issue pursuant to the terms of
103 **BONDS** this Agreement.
104
105 **NEDERLANDER** That certain annexation and development
106 **ANNEXATION** agreement dated August 22, 1978 and approved
107 **AGREEMENT** by the Village by Village Ordinance No. 1039-
108 1978, as amended.
109
110 **NOTE(S)** The economic development project tax increment
111 revenue note(s) authorized to be issued by the
112 Village pursuant to the terms of this
113 Agreement, including Notes to evidence
114 Developer Advances, Notes to evidence
115 obligations to reimburse private financing
116 costs and Notes evidencing obligations to any
117 credit enhancers.
118
119 **OBLIGATIONS** The Bonds, the Notes, special service area
120 bonds and any other instrument evidencing the
121 obligation of the Village to pay money in
122 furtherance of the Economic Development Plan
123 and the development of the Subject Property
124 (including, without limitation, bonds, notes,
125 installment or financing contracts,
126 certificates, tax anticipation warrants or
127 notes, vouchers, and any other evidence of
128 indebtedness).
129
130 **PCMT PROPERTY** The real estate upon which the Poplar Creek
131 Music Theater is situated. The PCMT Property
132 is legally described on Exhibit "C" to the
133 Nederlander Annexation Agreement.
134
135 **PARTIES** The Village and the Developer.
136
137 **PHASE I** That development occurring during the life of
138 **DEVELOPMENT** the Economic Development Project either within
139 or outside the boundaries of the Project Area
140 (including, without limitation, site
141 preparation, the construction of buildings,
142 structures, utility installations, roadways
143 and other improvements) which is undertaken
144 on, in connection with, or in furtherance of
145 the use, occupancy and development of the
146 Phase I Site.
147

148	PHASE II	That development occurring during the life of
149	DEVELOPMENT	the Economic Development Project either within
150		or outside the boundaries of the Project Area
151		(including, without limitation, site
152		preparation, the construction of buildings,
153		structures, utility installations, roadways,
154		and other improvements) which is undertaken
155		on, in connection with, or in furtherance of
156		the use, occupancy and development of the
157		Phase II Site.
158		
159	PHASE I SITE	That portion of the Subject Property,
160		consisting of approximately two hundred (200)
161		acres, which is located in the northwest
162		corner of the Subject Property. The Phase I
163		Site is legally described on Exhibit "D"
164		attached hereto.
165		
166	PHASE II SITE	The Subject Property, exclusive of the Phase I
167		Site. The Phase II Site consists of
168		approximately five hundred eighty-eight (588)
169		acres and includes the PCMT Property. The
170		Phase II Site is legally described on Exhibit
171		"E" attached hereto.
172		
173	PHASE I TAX	The ad valorem taxes levied upon taxable real
174	INCREMENT	property within the Phase I Site by any and
175	REVENUES	all Taxing Districts having the power to tax
176		real property in the Phase I Site, which taxes
177		are attributable to the increase in the then
178		current equalized assessed valuation of each
179		taxable lot, block, tract, or parcel of real
180		property in the Phase I Site over and above
181		the initial equalized assessed value of each
182		such lot, block, tract or parcel of real
183		property.
184		
185	PHASE I TAX	The date on which the Phase I Tax Increment
186	INCREMENT	Revenues received and deposited in the Fund
187	REVENUE	reflect a full year's assessment of the SMG
188	COMMENCEMENT	Home Office Complex.
189	DATE	
190		
191	PHASE II TAX	The ad valorem taxes levied upon taxable real
192	INCREMENT	property within the Phase II Site by any and
193	REVENUES	all Taxing Districts having the power to tax
194		real property in the Phase II Site, which
195		taxes are attributable to the increase in the
196		then current equalized assessed valuation of
197		each taxable lot, block, tract or parcel of
198		real property in the Phase II Site over and
199		above the initial equalized assessed value of

each such lot, block, tract or parcel of real property.

PROJECT AREA

The Hoffman Estates Economic Development Project Area, which is legally and commonly described on Exhibit "F" attached hereto, and pictorially depicted on Exhibit "G" attached hereto, as heretofore established by the Corporate Authorities by Village Ordinance No. 2107-1989, adopted September 11, 1989, and as certified by the Department on October 6, 1989.

PROJECT COSTS

The reasonable or necessary costs incurred by the Village incidental to the Economic Development Project. Project Costs shall include, without limitation, "economic development project costs", as defined in the Act as of the date of this Agreement, and the following:

- (a) Costs of studies, surveys, development of plans and specifications, implementation and administration of the Economic Development Plan, including, but not limited to, personnel and professional service costs for architectural, engineering, legal, marketing, financial, planning, police, fire, public works or other services, provided, however, that no charges for professional services may be based on a percentage of the incremental tax revenues;
- (b) Property assembly costs within the Project Area, including, but not limited to, acquisition of land and other real or personal property, or rights or interests therein, and specifically including payments to the Developer and other nongovernmental parties as reimbursement for, respectively, Property Assembly Costs and the property assembly costs incurred by such other nongovernmental parties;
- (c) Site preparation costs, including, but not limited to, clearance of any area within the

252 Project Area by demolition or
253 removal of existing buildings,
254 structures, fixtures, utilities and
255 improvements, and clearing and
256 grading; and including installation,
257 repair, construction,
258 reconstruction, or relocation of
259 public streets, public utilities,
260 and other public site improvements
261 (and the acquisition of necessary
262 rights-of-way and easements
263 therefor) within or outside the
264 boundaries of the Project Area which
265 are essential to the preparation of
266 the Project Area for use in
267 accordance with the Economic
268 Development Plan; and specifically
269 including payments to the Developer
270 and other nongovernmental parties as
271 reimbursement for site preparation
272 costs incurred by the Developer or
273 such other nongovernmental parties;
274
275 (d) Costs of renovation, rehabilitation,
276 reconstruction, relocation, repair
277 or remodeling of any existing public
278 or private buildings, improvements
279 and fixtures within the Project
280 Area, and specifically including
281 payments to the Developer or other
282 nongovernmental parties as
283 reimbursement for such costs
284 incurred by the Developer or such
285 other nongovernmental parties;
286
287 (e) Costs of construction within the
288 Project Area of public works or
289 improvements, including but not
290 limited to, buildings, structures,
291 works, utilities or fixtures;
292
293 (f) Financing costs, including, but not
294 limited to, all necessary and
295 incidental expenses related to the
296 issuance of any Obligations, payment
297 of any interest on any Obligations
298 issued hereunder which accrues
299 during the estimated period of
300 construction of the part of the
301 Economic Development Project for
302 which such Obligations are issued
303 and for not exceeding thirty-six

(36) months thereafter, and any reasonable reserves related to the issuance of such Obligations;

(g) All or a portion of a Taxing District's capital costs resulting from the Economic Development Project necessarily incurred or estimated to be incurred by a Taxing District in the furtherance of the objectives of the Economic Development Plan and Economic Development Project, to the extent the Village, by written agreement, accepts and approves such costs;

(h) Relocation costs to the extent that the Village determines that relocation costs shall be paid or is required to make payment of relocation costs by federal or State law;

(i) The estimated tax revenues from real property in the Project Area acquired by the Village which, according to the Economic Development Plan, is to be used for a private use and which any Taxing District would have received had the Village not adopted tax increment allocation financing for the Project Area and which would result from such Taxing District's levies made after the time of the adoption by the Village of tax increment allocation financing to the time the current equalized assessed value of real property in the Project Area exceeds the Total Initial Equalized Assessed Value of real property in said area;

(j) Costs of job training, advanced vocational or career education, including, but not limited to, courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more Taxing Districts, provided that such costs are related to the establishment and

356 maintenance of additional job
357 training, advanced vocational
358 education or career education
359 programs for persons employed or to
360 be employed by employers located in
361 the Project Area and further
362 provided that when such costs are
363 incurred by a Taxing District or
364 Taxing Districts other than the
365 Village they shall be set forth in a
366 written agreement by or among the
367 Village and the Taxing District or
368 Taxing Districts, which agreement
369 describes the program to be
370 undertaken, including, but not
371 limited to, the number of employees
372 to be trained, a description of the
373 training and services to be
374 provided, the number and type of
375 positions available or to be
376 available, itemized costs of the
377 program and sources of funds to pay
378 the same, and the term of the
379 agreement. Such costs include,
380 specifically, the payment by
381 community college districts of costs
382 pursuant to SS3-37, 3-38, 3-40 and 3-
383 40.1 of the Public Community College
384 Act (Ill.Rev.Stat.Ch.103, S103
385 et.seq.) and by school districts of
386 costs pursuant to SS10-22.20a and
387 10-23.3a of The School Code
388 (Ill.Rev.Stat.Ch. 122);

389
390 (k) Private financing costs incurred by
391 the Developer or other
392 nongovernmental parties in
393 connection with the Economic
394 Development Project, and
395 specifically including payments to
396 the Developer or other
397 nongovernmental parties as
398 reimbursement for such costs
399 incurred by the Developer or such
400 other nongovernmental parties,
401 provided that:

402
403 (i) private financing costs shall
404 be paid or reimbursed by the
405 Village only pursuant to the
406 prior official action of the
407 Village evidencing an intent to

408 pay or reimburse such private
409 financing costs;
410
411 (ii) except as provided in
412 subparagraph (iv), the
413 aggregate amount of such costs
414 paid or reimbursed by the
415 Village in any one year shall
416 not exceed 30% of such costs
417 paid or incurred by the
418 Developer or such other
419 nongovernmental parties in that
420 year;
421
422 (iii) private financing costs shall
423 be paid or reimbursed by the
424 Village solely from the Special
425 Tax Allocation Fund established
426 pursuant to the Act and shall
427 not be paid or reimbursed from
428 the proceeds of any Obligations
429 issued by the Village;
430
431 (iv) if there are not sufficient
432 funds available in the Special
433 Tax Allocation Fund in any year
434 to make such payment or
435 reimbursement in full, any
436 amount of such interest cost
437 remaining to be paid or
438 reimbursed by the Village shall
439 accrue and be payable when
440 funds are available in the
441 Special Tax Allocation Fund to
442 make such payment; and
443
444 (v) in connection with its approval
445 and certification of the
446 Economic Development Project
447 pursuant to Section 5 of the
448 Act, the Village shall forward
449 a copy of this Agreement to the
450 Department;
451
452 (l) Other eligible expenses, as
453 permitted by the Act; and
454
455 (m) Developer Advances made to satisfy
456 or pay any of the foregoing Project
457 Costs (other than those identified
458 in paragraph (k) above).
459

460 **PROPERTY**
461 **ASSEMBLY COSTS**

The purchase price that is to be paid for the Subject Property pursuant to the Acquisition Contracts, and all reasonable title and survey charges; reasonable brokerage fees; reasonable attorneys fees; reasonable escrow charges; and all reasonable costs of soil, engineering and other "due diligence" tests and studies incurred in connection with the acquisition of the Subject Property.

469
470 **PUBLIC**
471 **IMPROVEMENTS**

The Public Site Improvements and the Public Works and Improvements.

472
473 **PUBLIC**
474 **SITE**
475 **IMPROVEMENTS**

The public streets, public utilities and other public site improvements consisting of the Phase I Development Public Site Improvements, all of which are set forth on Exhibit "H" attached hereto and the Phase II Development Public Site Improvements, all of which are set forth on Exhibit "I" attached hereto, which are constructed, or to be constructed, by the Village or the Developer, and all reasonable or necessary activities which are undertaken in connection with such construction, within the Project Area (or outside the boundaries of the Project Area but essential to the preparation of the Project Area for use in accordance with the Economic Development Plan), which result in the Village's incurring "site preparation costs", as defined by Section 3(e)(3) of the Act. Exhibits "H" and "I" may be amended by the Parties, from time to time, pursuant to the provisions of this Agreement. Natural gas, electric and telephone service shall not be included within the definition of "public utilities", as used above and as used in Section 4.3 of this Agreement, except to the extent that they relate to natural gas, electric and telephone service improvements which are to be dedicated to, and owned by, the Village (e.g. public street lights).

502
503 **PUBLIC WORKS**
504 **AND**
505 **IMPROVEMENTS**

Those public improvements (including, but not limited to, buildings, structures, works, utilities or fixtures) identified on Exhibit "J" attached hereto which are constructed, or to be constructed, by the Village, and all activities which are undertaken in connection with such construction, which are authorized by this Agreement and the Economic Development Plan which result in the Village's incurring

512 "costs of construction", as defined by Section
513 3(e)(5) of the Act. Exhibit "J" may be
514 amended by the Parties, from time to time,
515 pursuant to the provisions of this Agreement.
516
517 **REVENUE** The economic development project tax increment
518 **BONDS** revenue bonds authorized to be issued by the
519 Village pursuant to the terms of Section
520 6.3(b) and Article 8 of this Agreement.
521
522 **SANITARY SEWER** The sanitary sewer interceptor and related
523 **IMPROVEMENTS** facilities which, pursuant to the terms of
524 this Agreement, are to be constructed by the
525 Village in order to provide sanitary sewer
526 service to the Project Area.
527
528 **SMG** Sears Merchandise Group, a group of Sears,
529 Roebuck and Co., a New York corporation.
530
531 **SMG** The mixed use complex of no less than
532 **HOME OFFICE** 1,600,000 square feet of low to mid-rise
533 **COMPLEX** development which is to be constructed on a
534 portion of the Phase I Site for purposes of
535 housing Developer's Merchandise Group home
536 office and related uses. The location of such
537 portion of the Phase I Site is generally
538 depicted on Exhibit "K" attached hereto.
539
540 **SMG OCCUPANCY DATE** The date the Developer substantially completes
541 the SMG Home Office Complex and applies to the
542 Village, in accordance with Village
543 ordinances, for issuance of a temporary or
544 permanent certificate of occupancy for the SMG
545 Home Office Complex.
546
547 **SMG OCCUPANCY** The written notice which the Developer is to
548 **DATE NOTICE** deliver to the Village confirming that the
549 Developer has received the last governmental
550 permit or approval necessary to the
551 Developer's commencement of construction of
552 the SMG Home Office Complex. The SMG
553 Occupancy Date Notice shall be substantially
554 in the form of Exhibit "L" attached hereto.
555
556 **SPECIAL TAX** The 1989 Hoffman Estates Economic Development
557 **ALLOCATION** Project Area Special Tax Allocation Fund,
558 **FUND** which is a special fund established pursuant
559 **(OR FUND)** to the provisions of the Act and created by
560 Village Ordinance No. 2108-1989, adopted by
561 the Corporate Authorities on September 11,
562 1989, which shall be the repository for: (i)
563 the Tax Increment Revenues; (ii) the other

564 monies which are to be deposited in the Fund
565 pursuant to the Act or this Agreement; and
566 (iii) the income earned on the investment of
567 the monies deposited in the Fund.
568
569 **SUBJECT** That certain parcel of real estate under the
570 **PROPERTY** ownership or control of the Developer
571 consisting of approximately 788 acres, bounded
572 generally on the north by Higgins Road, on the
573 east by Route 59, on the south by I-90 and on
574 the west by Beverly Road (excluding the
575 approximately 44 acres located east of Old
576 Sutton Road and north of the corporate limits
577 of the Village). The Subject Property is
578 legally described on Exhibit "M" attached
579 hereto.
580
581 **TAX INCREMENT** The sum of the Phase I Tax Increment Revenues
582 **REVENUES** and the Phase II Tax Increment Revenues.
583
584 **TAXING DISTRICTS** Counties, townships, municipalities, and
585 school, road, park, library, sanitary,
586 mosquito abatement, forest preserve, public
587 health, fire protection, river conservancy,
588 tuberculosis sanitarium and any other
589 municipal corporations or districts with the
590 power to levy taxes on real property located
591 in the Project Area.
592
593 **TOTAL INITIAL** The total initial equalized assessed value of
594 **EQUALIZED** the taxable real property within the Project
595 **ASSESSED VALUE** Area, as determined by the County Clerk of
596 Cook County in accordance with the provisions
597 of the Act.
598
599 **TOTAL MINIMUM** That amount of the assessed valuation of the
600 **ASSESSED** Subject Property for a given levy year which,
601 **VALUATION** when taken together with the applicable tax
602 rate and state equalization factor for such
603 levy year, will be required to produce Tax
604 Increment Revenues sufficient: (i) to satisfy
605 the debt service requirements, including
606 additions to required reserves, on outstanding
607 Revenue Bonds for the next succeeding year, as
608 required by then outstanding Village
609 ordinances authorizing issuance of such
610 Revenue Bonds; and (ii) to pay the
611 appropriate Allocated Tax Increment Revenue
612 Amounts for the next succeeding year, as set
613 forth on Exhibits "B" and "C" attached hereto.
614
615

616 **VILLAGE** The Village of Hoffman Estates, an Illinois
617 home rule municipal corporation.
618
619 **VILLAGE MUNICIPAL** The municipal service facility which is to be
620 **FACILITY** constructed on the Village Municipal Site
621 which may include offices, a Village fire
622 station, a Village police station and an
623 interior public works area. A "Village Green"
624 may adjoin the Village Municipal Facility and
625 be located on the Village Municipal Site.
626
627 **VILLAGE** That certain fifteen (15) acre portion of the
628 **MUNICIPAL SITE** Subject Property which is to be agreed upon
629 and identified by the Parties on the
630 conceptual land use plan submitted pursuant to
631 Section 3.1(d)(1)(iv) of this Agreement.
632
633 **VILLAGE PROJECT** Those Project Costs incurred at any time by
634 **COSTS** the Village which shall include, and be
635 limited to, the following (to the extent
636 permitted under the Act):
637
638 (a) Costs of studies, surveys,
639 development of plans and
640 specifications, and administration,
641 personnel and professional service
642 costs related to the Village's
643 implementation and administration of
644 the Economic Development Plan and
645 Economic Development Project,
646 (including, but not limited to,
647 personnel and professional costs for
648 administrative, engineering, legal,
649 marketing, financial, planning,
650 public works or other services);
651
652 (b) Costs of providing police and fire
653 protection to the Development and
654 the Project Area;
655
656 (c) Costs of development, construction,
657 maintenance, repair and replacement
658 of the Public Works and Improvements
659 (including, without limitation, the
660 Village Municipal Facility and the
661 Village Water Tank);
662
663 (d) Costs of: (i) maintenance and repair
664 of the Public Site Improvements
665 after their conveyance to, and
666 acceptance by, the Village; and
667 Village-owned water lines and sewer

lines existing as of the date of this Agreement either within or outside the boundaries of the Project area; and (ii) replacement of Public Site Improvements after their conveyance to, and acceptance by, the Village in accordance with Village ordinance; and

- (e) All financing costs related to the costs identified in (a) through (d) above, including, but not limited to, all necessary and incidental expenses related to the issuance of those Village Obligations (including the General Obligation Bonds) which are issued to pay the costs identified in (a) through (d) above; payment of any interest on any such Village Obligations which accrue during the estimated period of construction of the part of the Economic Development Project for which such Village Obligations are issued and for not exceeding thirty-six (36) months thereafter; and any reasonable reserves related to the issuance of such Village Obligations.

VILLAGE WATER TANK

The water storage tank which is to be constructed by the Village within the Project Area or within the vicinity of the Project Area for purposes of furthering the use of the Project Area in accordance with the Economic Development Plan. The Village Water Tank is to provide storage for not less than seven hundred fifty thousand (750,000) gallons of water.

RECITALS

A. Pursuant to the Act and to the terms of the Economic Development Plan, the Village proposed the Economic Development Project for economic development of certain designated areas either within its municipal limits or pending annexation to the Village. The site proposed for the Economic Development Project is the Project Area. The Project Area includes the Subject Property. The Economic Development Plan sets forth a mixture of land use activities within the Project Area.

B. On September 11, 1989, the Village adopted Ordinance No. 2108-1989 adopting tax increment allocation financing for the Project Area. Such ordinance provides that the Tax Increment Revenues which are realized within the Project Area are to be paid to the Village for deposit in the Special Tax Allocation Fund in order to pay Project Costs and principal and interest obligations coming due on the Obligations.

C. The Corporate Authorities, after due and careful consideration, have concluded that the development of the Project Area, as provided in this Agreement and in the Economic Development Plan, will: (i) create or retain not less than 2,000 full-time equivalent jobs; (ii) cause private investment in an amount of not less than \$100,000,000 to occur in the Project Area; (iii) encourage the increase of commerce and industry within the State of Illinois, thereby reducing the evils attendant upon unemployment and increasing opportunities for personal income; (iv) increase or maintain the property, sales and income tax bases of the Village

739 and of the State of Illinois and enable the Village to control the
740 development of the Subject Property; and (v) otherwise be in the
741 best interests of the Village.

742 D. Subject to the terms and provisions of the Act and this
743 Agreement: (i) the Developer intends to acquire, or to cause its
744 nominee to acquire, the Subject Property, and the Village intends
745 to reimburse the Developer for the Property Assembly Costs the
746 Developer incurs, or to pay the Developer's Property Assembly
747 Costs, out of Tax Increment Revenues (other than the Allocated Tax
748 Increment Revenue Amounts), or other monies deposited in the Fund,
749 the proceeds of Revenue Bonds, and the proceeds of Developer
750 Advances; (ii) the Developer intends to develop the Phase I Site
751 with at least the SMG Home Office Complex; (iii) the Developer may
752 hereafter develop the Phase II Site with the uses specified in the
753 Economic Development Plan; and (iv) the Village intends to
754 reimburse the Developer for the Project Costs the Developer pays,
755 incurs or advances to, or on behalf of, the Village out of Tax
756 Increment Revenues (other than the Allocated Tax Increment Revenue
757 Amounts), other monies deposited in the Fund, or from the proceeds
758 of Revenue Bonds.

759 E. The Parties acknowledge that the purchase price
760 established by the Acquisition Contracts for the Subject Property
761 is reasonable.

762 F. The development of the Subject Property, and the
763 fulfillment generally of the terms and provisions of this
764 Agreement, are in the vital and best interest of the Village and

the health, safety, and welfare of its residents and taxpayers.

G. The Parties intend to enter into this Agreement under the authority of the Act and pursuant to the Village's home-rule authority.

NOW, THEREFORE, in consideration of the foregoing Recitals, and the mutual agreements set forth below, it is hereby agreed by and between the Parties as follows:

ARTICLE 1. INCORPORATION OF RECITALS

The representations set forth in the foregoing Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

ARTICLE 2. GOALS, MUTUAL ASSISTANCE AND COOPERATION

2.1. Goals and Mutual Assistance

The Parties acknowledge that it is their mutual goal and desire to further the objectives of the Economic Development Plan and Economic Development Project, to further the improvement and development of the Project Area, and to finance all costs of the Development as Project Costs (to the fullest extent permitted by law and in the most economically efficient manner) pursuant to the provisions of this Agreement. Accordingly, the Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement and the intentions of the Parties as reflected by said terms. Specifically, if it shall become necessary, the Village: (i) shall assist the Developer in

791 acquiring portions of the Subject Property (whether or not such
792 portions are the subject of the Acquisition Contracts); and (ii) at
793 the request of the Developer, shall attempt to acquire properties,
794 rights-of-way and easements necessary to the development of the
795 Project Area by the use of its power of eminent domain (provided,
796 however, that the Village makes no representation or warranty
797 regarding its ability to acquire any such portions of the Subject
798 Property, or any of such properties, rights-of-way or easements by
799 use of its power of eminent domain, and provided further that the
800 Developer shall pay and satisfy all purchase prices, settlements,
801 judgments, orders or other costs and expenses incurred by the
802 Village in the exercise of such powers by making a Developer
803 Advance in the amount of such costs and expenses). In the event
804 the Village acquires all or any portion of the Subject Property
805 through the use of its power of eminent domain as set forth above,
806 it shall convey the same to the Developer immediately thereafter
807 for one dollar (\$1.00).

808 **2.2. Cooperation in Seeking Financial Aid and Assistance**

809 The Parties shall cooperate with each other in seeking
810 financial or other aid and assistance required for or useful to the
811 construction of roadway, highway and utility improvements
812 (including a two million three hundred thousand dollar
813 (\$2,300,000.00) "Build Illinois" infra-structure grant for the
814 construction of the Sanitary Sewer Improvements) within the Project
815 Area or outside the boundaries of the Project Area (but essential
816 to the preparation of the Project Area for use in accordance with

the Economic Development Plan) from all appropriate governmental bodies (whether Federal, State, County or local). In addition, in order to gain the Department's certification of the Village's designation of the Project Area as an "Enterprise Zone" for the maximum statutory term pursuant to the Illinois Enterprise Zone Act (Ill.Rev.Stat. Ch. 67 1/2,SS601 et seq.), the Village, in accordance with the provisions of said statute and within sixty (60) days of the date of this Agreement, shall: (i) pass an ordinance designating the Project Area as an "Enterprise Zone"; (ii) submit a complete written application to the Department seeking the Department's certification of the Village's designation of the Project Area as an "Enterprise Zone"; and (iii) take such other actions as may be necessary or appropriate under the provisions of said statute to gain certification by the Department of the Project Area as an "Enterprise Zone". The Village, pursuant to said statute or other applicable state statutes or local ordinances, shall also consent to local sales tax exemption for construction materials purchased in connection with the Development.

ARTICLE 3. DEVELOPMENT OF THE SUBJECT PROPERTY

3.1. Phase I Development

(a) General.

The Phase I Development shall be the first priority of the Parties. The first stage of that development shall encompass the construction of the SMG Home Office Complex. The SMG Home Office Complex shall be

constructed in a manner consistent with the goals and objectives of the Economic Development Plan and shall be of a quality that is consistent with other first-class office facilities located in the Greater Chicagoland Metropolitan Area.

(b) Permits.

Before commencement of construction of any portion of the SMG Home Office Complex, the Developer, at its expense, shall secure, or cause to be secured, all permits or approvals which may be required by the Village and other governmental agencies having jurisdiction over such construction, in whole or in part, including, without limitation, all permits required, if any, from the U.S. and Illinois Environmental Protection Agencies, the Metropolitan Water Reclamation District, the U.S. Army Corps of Engineers, the Illinois Department of Transportation and all other local, Federal and State agencies having or exercising any jurisdiction over such construction or over the portion of the Project Area that is affected by such construction. The Village shall provide all proper assistance to the Developer in securing such permits and shall promptly execute all permits and permit applications which require or benefit from such execution provided such permits and permit applications (and the plans relating thereto) are in proper form and comply with all lawful requirements. The

Village shall promptly issue all permits required to be issued by the Village provided such permits (and the permit applications and plans relating thereto) are in proper form and comply with all lawful requirements.

(c) Preliminary Grading.

Notwithstanding the provisions of the foregoing paragraph (b), and provided the public hearings described in Section 3.1(d) have commenced, the Board of Trustees shall authorize issuance to the Developer of a site development permit for mass grading and storm water management installation and other similar excavation-related tasks on the Subject Property prior to receipt of all of the foregoing permits, prior to final Village approval of the Amendment to the Annexation Agreements and prior to approval of final engineering plans for the Phase I Development provided that:

- (1) The Developer satisfies the Village staff and Board of Trustees that the Developer is providing the necessary erosion and sedimentation control measures to satisfy the principles set forth in Sub-Section A of Section 10-8-6 of the Village's Municipal Code (Erosion and Sedimentation Control); and
- (2) The Board of Trustees receives a tree survey from the Developer showing all trees having a four inch (4") caliper or more and the Board approves a tree

895 preservation plan satisfying the principles set
896 forth in Sub-section D in Section 10-8-11 of the
897 Hoffman Estates Municipal Code and issues or
898 directs the Village staff to issue any necessary
899 tree removal permits; and

900 (3) That such grading and other work shall be
901 undertaken at the Developer's sole cost and risk
902 and the Developer, pursuant to Article 20 of this
903 Agreement, shall indemnify the Village against,
904 and hold the Village harmless from, all costs,
905 expenses, reasonable attorney fees, losses,
906 liabilities and damages that may be suffered or
907 sustained by the Village as a result of Developer's
908 undertaking such grading and other work.

909 (4) That the President and Board of Trustees shall find
910 that provisions C - (1), (2) and (3) above are
911 satisfied and grant approval for such preliminary
912 grading.

913 (d) Submission of Development Documentation

914 (1) On or before March 1, 1990, the Developer shall
915 submit the following to the Village for the
916 Village's review and approval:

917 (i) A Community Impact Statement for the Subject
918 Property submitted pursuant to Village
919 Ordinance No. 914-1977;

920 (ii) An application for approval by the Corporate

921 Authorities of the Amendment to the Annexation
922 Agreements;
923 (iii) An application for the granting of the relief
924 provided for in the Amendment to the
925 Annexation Agreements;
926 (iv) A conceptual land use plan for the Subject
927 Property (which plan identifies, among other
928 things, estimates of square footage, proposed
929 land uses, internal roadway plans and the
930 proposed location of the Village Municipal
931 Site); and
932 (v) A preliminary site plan, preliminary plat of
933 subdivision, preliminary engineering plans,
934 preliminary landscaping plans and other
935 appropriate preliminary documentation for the
936 Phase I Development.

937 Within thirty (30) days of the Village's receipt of
938 the last of the foregoing submittals (provided such
939 submittals are complete and in a form acceptable to the
940 Village), the Village shall schedule, and give all
941 notices required to be given for, all public hearings
942 required to be conducted by the Corporate Authorities,
943 the Board of Trustees, the Plan Commission, the Zoning
944 Board of Appeals and all other commissions and committees
945 of the Village for purposes of considering the
946 Developer's applications, plats and plans. Such public

947 hearings shall be conducted by the Village in an
948 expeditious manner and, to the extent practicable, but in
949 the sole discretion of the Village, such public hearings
950 shall be conducted concurrently before the aforesaid
951 entities, commissions and committees. The Developer, at
952 any of such public hearings, shall have the right, at the
953 Developer's option, to present preliminary and final
954 plats and plans concurrently or to bypass the submittal
955 of preliminary plats and plans entirely in favor of
956 proceeding directly with the review and approval of final
957 plats and plans.

958 (2) Not later than sixty (60) days after the Village's
959 adoption of the ordinances and resolutions
960 authorizing the execution of the Amendment to the
961 Annexation Agreements and granting the relief
962 provided for in the Amendment to the Annexation
963 Agreements, the Developer shall submit the
964 following to the Village for the Village's review
965 and approval:

966 (i) A final plat of subdivision for the Phase I
967 Development;

968 (ii) Final grading, utility and roadway plans for
969 the construction of the SMG Home Office
970 Complex;

971 (iii) Final engineering plans for the Public Site
972 Improvements which are to be constructed as

973 part of the Phase I Development (as identified
974 on Exhibit "H" to this Agreement), which
975 improvements shall include all Public Site
976 Improvements necessary to the construction,
977 use and occupancy of the SMG Home Office
978 Complex; and

979 (iv) Such other documentation as the Village may
980 reasonably request as a condition precedent to
981 the issuance of a building permit for the SMG
982 Home Office Complex.

983 The Village's staff and representatives, during the
984 time the Developer is preparing all such final plats and
985 plans, shall meet with the Developer, and its
986 representatives, to coordinate the preparation of such
987 plats and plans and their submission to, and review by,
988 the Village. The Village and the Developer shall
989 communicate and consult informally with each other as
990 frequently as is necessary to insure that the review,
991 processing and approval of all such plats and plans
992 receives prompt consideration by the Village.

993 The Board of Trustees shall approve or disapprove
994 all such final plats and plans within thirty (30) days of
995 their submission to the Village provided: (i) such plats
996 and plans are complete, have been reviewed by the Plan
997 Commission upon an expedited schedule that shall be
998 provided for in the Amendment to the Annexation

999 Agreements, and are in a form acceptable to the Village;
1000 (ii) the Amendment to the Annexation Agreements has then
1001 been approved by the Corporate Authorities and executed
1002 by the Parties; (iii) all annexation and zoning
1003 ordinances provided for in the Amendment to the
1004 Annexation Agreements have been adopted by the Village;
1005 and (iv) such plats and plans substantially conform to
1006 the preliminary plats and plans. If such plats or plans
1007 are disapproved, as soon as reasonably possible
1008 thereafter, the Developer shall submit revised plats and
1009 plans to the Village.

1010 (e) Construction of Phase I Development Public Site
1011 Improvements.

1012 (1) The Developer is hereby appointed as the Village's
1013 sole and exclusive agent for purposes of managing
1014 and overseeing the engineering, design and
1015 construction of those Public Site Improvements
1016 which are to be constructed as part of the Phase I
1017 Development (as identified on Exhibit "H" to this
1018 Agreement), provided, however, that: (i) before
1019 either the Village or the Developer enters into any
1020 contract for construction or construction services
1021 relating to the construction of such Public Site
1022 Improvements, the Developer shall select a
1023 contractor and the Village shall approve such
1024 contractor provided the conditions of this Section
1025 3.1(e) are met and further provided the contractor

1026 can complete the improvements in such a manner and
1027 in accordance with such a timetable as may be
1028 agreed to by the Parties; and (ii) all such
1029 contracts shall be executed by the Village to the
1030 extent necessary to further the goals of this
1031 Agreement. The Developer shall not be required to
1032 advertise for bids or to submit multiple bids to
1033 the Village prior to entering into such contracts.
1034 (2) The Board of Trustees shall receipt all contracts
1035 submitted to it by the Developer in order to
1036 review: (i) that the contractors which are to
1037 perform work pursuant to such contracts are
1038 sufficiently experienced in doing the size and type
1039 of work required for the construction of the
1040 improvements to be constructed; (ii) that all such
1041 contracts accurately reflect the cost of completing
1042 such improvements; and (iii) that no purpose would
1043 be served in the Village's obtaining further bids
1044 for the construction of such improvements. The
1045 Board of Trustees shall have twenty-one (21) days
1046 to review and approve or disapprove the contracts
1047 submitted to it by the Developer. If disapproved,
1048 the Village Manager shall give reasons, in writing,
1049 to the Developer for such disapproval. All
1050 construction contracts shall provide for payment in
1051 accordance with the provisions of this Agreement.

1052 With respect to such construction contracts, and
1053 where the provisions of this Section 3.1(e) are
1054 satisfied, the Board of Trustees, in accordance
1055 with Ill.Rev.Stat. Ch. 24, S8-9-1 (1987), shall
1056 hereafter waive any advertising for bids by the
1057 Village.

1058 Notwithstanding the foregoing, the Village hereby
1059 approves those contracts which have been entered into as
1060 of the date of this Agreement or which are to be entered
1061 into, by or on behalf of the Developer, with the parties
1062 and for the services identified on Exhibit "N" to this
1063 Agreement; waives advertising for bids for the services
1064 to be provided by such contracts; and acknowledges that
1065 all costs incurred pursuant to those contracts shall be
1066 considered Project Costs that relate directly to Public
1067 Improvements or Public Site Improvements or Property
1068 Assembly Costs as Project Costs and both the Village and
1069 Sears agree that Chapman & Cutler as Bond Counsel for the
1070 Village will determine what costs in Exhibit "N" qualify
1071 as Project Costs under the Act. The provisions of
1072 Section 17.5 of this Agreement, Dispute Resolution shall
1073 not apply to the determination made by Chapman & Cutler
1074 relating to Exhibit "N" which are to be paid or
1075 reimbursed pursuant to the terms of this Agreement.

1076 (3) Notwithstanding the provisions of the foregoing
1077 paragraphs (1) and (2), the Village retains the

1078 right and the obligation to undertake the
1079 engineering, design and construction of the
1080 Sanitary Sewer Improvements and agrees to
1081 substantially complete, or cause the substantial
1082 completion of, the construction of the Sanitary
1083 Sewer Improvements by the SMG Occupancy Date.

1084 (f) SMG Occupancy Date.

1085 The Developer shall deliver the SMG Occupancy Date
1086 Notice to the Village not more than sixty (60) days after
1087 the date of the Amendment to the Annexation Agreements,
1088 and the Developer shall substantially complete, or cause
1089 the substantial completion of, the SMG Home Office
1090 Complex, and cause the SMG Occupancy Date to occur, not
1091 later than thirty (30) months after the date the
1092 Developer delivers the SMG Occupancy Date Notice to the
1093 Village provided the Village has completed construction
1094 of the Village Water Tank and the Sanitary Sewer
1095 Improvements.

1096 3.2. Phase II Development

1097 (a) General.

1098 The Phase II Development shall be constructed in
1099 accordance with the terms and provisions of the Economic
1100 Development Plan and shall include amenities, facilities
1101 and landscaping that are of a similar quality to other
1102 first-class office and mixed use developments located in
1103 the Greater Chicagoland Metropolitan Area. The Phase II

1104 Development may occur in stages or phases. The Developer
1105 shall not be obligated to commence construction of the
1106 Phase II Development, or any portion thereof, at any
1107 time.

1108 (b) Construction of Phase II Development Public Site
1109 Improvements.

1110 (1) The Village retains the right to manage and oversee
1111 the engineering, design and construction of those
1112 Public Site Improvements which are to be
1113 constructed as part of the Phase II Development
1114 (except those Phase II Development Public Site
1115 Improvements identified on Exhibit "I" which are to
1116 be constructed upon the Subject Property), provided
1117 that the Village shall coordinate such engineering,
1118 design and construction with the Developer. The
1119 Developer shall act as the Village's agent for
1120 purposes of managing and overseeing the
1121 engineering, design and construction of the Phase
1122 II Development Public Site Improvements identified
1123 on Exhibit "I" to this Agreement which are to be
1124 constructed on the Subject Property provided,
1125 however, that: (i) before either the Village or the
1126 Developer enters into any contract for construction
1127 or construction services relating to the
1128 construction of such Phase II Development Public
1129 Site Improvements, the Developer shall select a
1130 contractor and the Village shall approve such

1131 contractor provided the conditions of this Section
1132 3.2(b) are met and further provided the contractor
1133 can complete the improvements in such a manner and
1134 in accordance with such a timetable as may be
1135 agreed to by the Parties; and (ii) all such
1136 contracts shall be executed by the Village to the
1137 extent necessary to further the goals of this
1138 Agreement. The Developer shall not be required to
1139 advertise for bids or to submit multiple bids to
1140 the Village.

1141 (2) The Board of Trustees shall receipt all contracts
1142 submitted to it by the Developer in connection with
1143 the construction of the Phase II Development Public
1144 Site Improvements identified on Exhibit "I" to this
1145 Agreement in order to review: (i) that the
1146 contractors which are to perform work pursuant to
1147 such contracts are sufficiently experienced in
1148 doing the size and type of work required for the
1149 construction of the improvements to be constructed;
1150 (ii) that all contracts accurately reflect the cost
1151 of completing such improvements; and (iii) that no
1152 purpose would be served in the Village's obtaining
1153 bids for the construction of such improvements.
1154 The Board of Trustees shall have twenty-one (21)
1155 days to review and approve or disapprove the
1156 contracts submitted to it by the Developer. If

1157 disapproved, the Village Manager shall give
1158 reasons, in writing, to the Developer for such
1159 disapproval. All construction contracts shall
1160 provide for payment in accordance with the
1161 provisions of this Agreement. With respect to such
1162 construction contracts and where the provisions of
1163 this Section 3.2(b) are satisfied, the Board of
1164 Trustees, in accordance with Ill.Rev.Stat.
1165 Ch.24,S8-9-1(1987), shall hereafter waive any
1166 advertising for bids by the Village.

1167 **3.3. Construction of Public Works and Improvements**

1168 The Village retains the right to manage and oversee the
1169 engineering, design and construction of the Public Works and
1170 Improvements. The design and location of the Village Water Tank
1171 and the parameters for the design and construction of the Village
1172 Municipal Facility and the Village Water Tank shall be provided for
1173 in the Amendment to the Annexation Agreements.

1174 **3.4. Covenant to Run With Land Regarding Uses of the Subject**
1175 **Property.**

1176 The Developer hereby covenants that, for the term of the
1177 Economic Development Plan, the Subject Property shall be devoted
1178 only to the uses specified in the Economic Development Plan. Such
1179 covenant shall constitute a covenant running with the land which
1180 shall terminate upon expiration of the Economic Development Plan.
1181 At the request of the Village, the Developer shall execute, and
1182 record in the Cook County Recorder of Deeds Office, a Declaration
1183 of Covenants that confirms such covenant and that subjects the

1184 Subject Property to the terms of this Agreement and the Economic
1185 Development Plan.

1186 **3.5. Insurance**

1187 Prior to the commencement of construction of any portion of
1188 the Development, the Developer shall furnish, or cause to be
1189 furnished, to the Village certificates of insurance evidencing the
1190 procurement of comprehensive bodily injury and property damage
1191 liability insurance policies in the amount of at least two million
1192 dollars (\$2,000,000.00) for any injury or death to persons, five
1193 million dollars (\$5,000,000.00) for any injury or death to any
1194 number of persons arising out of any aggregate occurrence and five
1195 hundred thousand dollars (\$500,000.00) for property damage, which
1196 certificates confirm the naming of the Village, its officials,
1197 agents and employees as "additional insureds" under all such
1198 policies. The Developer shall have the option to provide the
1199 required insurance in a combined single limit form of not less than
1200 \$5,000,000.00. All such policies shall provide for at least thirty
1201 (30) days' notice to the Village of the cancellation or termination
1202 of such policies. Liability under the Illinois Structural Work Act
1203 and contractual liability for indemnification of the Village, its
1204 officials, agents and employees, shall be fully insured under these
1205 policies for the limits set forth above. The Developer shall cause
1206 such insurance to be maintained in force for so long as the
1207 Developer is undertaking the construction of any improvements on
1208 the Subject Property. Provided the Developer delivers to the
1209 Village documents that provide assurances to the Village equivalent

1210 to the assurances provided by the certificates of insurance as
1211 required above, the Developer shall have the right to self-insure
1212 for any or all of the losses described above.

1213 **3.6. Compliance of Plats, Plans and Construction Activities**
1214 **with Village Ordinances.**

1215 (a) All plats and plans submitted to the Village for the
1216 Village's review and approval shall comply with the codes
1217 and ordinances of the Village that are in effect at the
1218 time of such submittal except to the extent such codes or
1219 ordinances conflict with, or are made inapplicable to the
1220 Subject Property by, the Beverly Annexation Agreement,
1221 the Nederlander Annexation Agreement or the Amendment to
1222 the Annexation Agreements.

1223 (b) All construction activities undertaken on the Subject
1224 Property by, or under the direction of, the Developer
1225 shall be undertaken in compliance with the codes and
1226 ordinances of the Village that are in effect at the time
1227 of such construction except to the extent such codes or
1228 ordinances conflict with, or are made inapplicable to the
1229 Subject Property by, the Beverly Annexation Agreement,
1230 the Nederlander Annexation Agreement, the Amendment to
1231 the Annexation Agreements or this Agreement.

1232
1233

ARTICLE 4. COSTS OF THE DEVELOPMENT CONSTITUTING "PROJECT COSTS" WHICH ARE TO BE PAID OR FINANCED PURSUANT TO THE PROVISIONS OF THIS AGREEMENT

4.1. General

To the fullest extent permitted by law, but subject to the provisions of Section 4.3 of this Article 4, all costs incurred by the Parties in furtherance of the Economic Development Plan and the Economic Development Project and the Development shall be deemed Project Costs and such costs shall be paid for or financed pursuant to the provisions of Article 6 of this Agreement.

4.2. Project Costs Agreed Upon as of the Date of this Agreement.

As of the date of this Agreement, the Parties acknowledge the following costs to be Project Costs which are to be paid for or financed pursuant to the provisions of this Agreement:

(a) All reasonable or necessary Property Assembly Costs (including, without limitation, those costs identified on Exhibit "O" attached hereto) and both the Village and Sears agree that Chapman & Cutler as Bond Counsel for the Village will determine what costs in Exhibit "O" qualify as Project Costs under the Act. The provisions of Section 17.5 of this Agreement, Dispute Resolution shall not apply to the determination made by Chapman & Cutler relating to Exhibit "O";

(b) All reasonable or necessary costs of construction of the Public Improvements (including, without limitation, those costs identified on Exhibit "P" attached hereto) and both the Village and Sears agree that Chapman & Cutler as Bond

1262 Counsel for the Village will determine what costs in
1263 Exhibit "P" qualify as Project Costs under the Act. The
1264 provisions of Section 17.5 of this Agreement, Dispute
1265 Resolution shall not apply to the determination made by
1266 Chapman & Cutler relating to Exhibit "P";

1267 (c) All reasonable or necessary costs of preparation of
1268 surveys, development of plans and specifications,
1269 implementation and administration of the Economic
1270 Development Plan, and retention of personnel and
1271 professionals for architectural, engineering, legal,
1272 marketing, financial, planning, police, fire, public
1273 works and other services;

1274 (d) All reasonable or necessary financing costs (including,
1275 without limitation, all necessary and incidental expenses
1276 related to the issuance of the Obligations, payment of
1277 any interest on any such Obligations which accrues during
1278 the estimated period of construction of the Economic
1279 Development Project for which such Obligations are issued
1280 and for not exceeding thirty-six (36) months thereafter,
1281 and any reasonable reserves related to the issuance of
1282 such Obligations);

1283 (e) All reasonable or necessary Village Project Costs; and

1284 (f) All reasonable or necessary private financing costs
1285 incurred by the Developer in furtherance of the Economic
1286 Development Plan, the Economic Development Project and
1287 the Development, and specifically including payments to

1288 the Developer as reimbursement for such costs incurred by
1289 the Developer, provided that:
1290 (1) Such private financing costs shall be paid or
1291 reimbursed by the Village only pursuant to the
1292 prior official action of the Village evidencing an
1293 intent to pay or reimburse the Developer for such
1294 private financing costs (which action shall be
1295 deemed to have been taken by the Corporate
1296 Authorities' adoption of an ordinance authorizing
1297 the Village's execution of this Agreement);
1298 (2) Except as provided in subparagraph (4) hereof, the
1299 aggregate amount of such costs paid or reimbursed
1300 by the Village to the Developer in any one year
1301 shall not exceed thirty percent (30%) of such costs
1302 paid or incurred by the Developer in that year;
1303 (3) Private financing costs shall be paid or reimbursed
1304 by the Village solely from the Special Tax
1305 Allocation Fund and shall not be paid or reimbursed
1306 from the proceeds of Obligations issued by the
1307 Village;
1308 (4) If there are not sufficient funds available in the
1309 Special Tax Allocation Fund in any year to make
1310 such payment or reimbursement in full, any amount
1311 of such interest cost remaining to be paid or
1312 reimbursed by the Village shall accrue, and, at
1313 Developer's request, be evidenced by the execution

1314 and delivery of a Note, and be payable when funds
1315 are available in the Fund to make such payment (and
1316 any such payment shall be made without regard to
1317 the limitations contained in subparagraph (2)
1318 hereof); and

1319 (5) In connection with the Department's approval and
1320 certification of the Economic Development Project
1321 pursuant to Section 5 of the Act, the Village shall
1322 forward a copy of this Agreement to the Department.

1323 4.3. Project Costs Incurred in Connection With the
1324 Construction of Public Site Improvements Identified by
1325 the Village After the Date of this Agreement.

1326 (a) If:

1327 (1) After the date of this Agreement, the Village
1328 determines that a public street, public utility or
1329 other public improvement that is not identified on
1330 either Exhibit "H" or Exhibit "I" to this Agreement
1331 must be constructed in order to further the
1332 Economic Development Project and the Development;
1333 and

1334 (2) The Developer accepts and agrees with such
1335 determination;

1336 then such public street, public utility or public
1337 improvement shall be deemed a "Public Site Improvement"
1338 and the entire cost of constructing such Public Site
1339 Improvement shall be deemed a Project Cost which is to be
1340 paid for or financed pursuant to the provisions of

Article 6 of this Agreement.

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(b) If:

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(1) After the date of this Agreement, the Village determines that a public street, public utility or other public improvement that is not identified on either Exhibit "H" or Exhibit "I" to this Agreement must be constructed in order to further the Economic Development Project and the Development; and

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(2) The Developer believes that such public street, public utility or other public improvement provides a material benefit to areas outside the boundaries of the Project Area;

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then, subject to the provisions of paragraph (d) of this Section 4.3, such public street, public utility or public improvement shall be deemed a "Public Site Improvement" and that portion, and only that portion, of the cost of constructing such Public Site Improvement which is specifically and uniquely attributable to the Development shall be deemed a Project Cost which is to be paid for or financed pursuant to the provisions of Article 6 of this Agreement.

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(c) Not less than 30 days after the Village makes a determination pursuant to the foregoing paragraph (a) or paragraph (b) that a public street, public utility or public improvement must be constructed in order to

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1367 further the Economic Development Project and the
1368 Development, the Village shall deliver notice to the
1369 Developer identifying:

1370 (1) The public street, public utility or public
1371 improvement and the basis for the Village's
1372 determination that such public street, public
1373 utility or public improvement must be constructed
1374 in order to further the Economic Development
1375 Project and the Development;

1376 (2) The Village's determination of the anticipated cost
1377 of constructing such public street, public utility
1378 or public improvement;

1379 (3) The Village's determination as to whether or not
1380 such public street, public utility or public
1381 improvement provides a material benefit to areas
1382 outside the boundaries of the Project Area; and

1383 (4) The Village's determination as to the portion of
1384 the cost of constructing such public street, public
1385 utility or public improvement which is specifically
1386 and uniquely attributable to the Development.

1387 (d) If the Developer agrees with the Village's determinations
1388 made pursuant to the foregoing paragraph (c), then the
1389 portion of the cost of constructing such public street,
1390 public utility or public improvement which is
1391 specifically and uniquely attributable to the Development
1392 shall be deemed a Project Cost. If the Developer

1393 disagrees with any determination made by the Village
1394 pursuant to the provisions of this Section 4.3, then the
1395 following process shall occur:

1396 (1) The Developer shall deliver notice to the Village
1397 identifying the specific Village determination with
1398 which the Developer disagrees;

1399 (2) The Village, at the Village's cost, shall retain a
1400 consultant to provide evidence which supports the
1401 Village's determination and shall submit that
1402 evidence, with a report that summarizes the
1403 consultant's methodologies and conclusions, to the
1404 Developer;

1405 (3) If the Developer disagrees with such consultant's
1406 evidence, methodologies or conclusions, then the
1407 Developer, at the Developer's cost, shall retain a
1408 consultant to provide evidence which supports the
1409 Developer's conclusions relative to the Village's
1410 determination and shall submit that evidence, with
1411 a report that summarizes such consultant's
1412 methodologies and conclusions, to the Village; and

1413 (4) If the Parties are thereafter unable to resolve
1414 their difference of opinion, then the Village's
1415 consultant and the Developer's consultant shall
1416 jointly choose a third consultant, at a cost to be
1417 shared equally by the Village and the Developer,
1418 who shall make a final determination as to the

1419 matter in dispute, and such determination shall be
1420 final and binding on the Parties.

1421 **4.4. Determining "Reasonable or Necessary" Costs**

1422 Determinations of the Parties as to what costs are "reasonable
1423 or necessary" costs that are incidental to the Economic Development
1424 Project, as such terms are used in the Act and this Agreement,
1425 shall be consistent with the provisions of Sections 2.1 and 4.1 of
1426 this Agreement.

1427 **ARTICLE 5. SPECIAL TAX ALLOCATION FUND**

1428 **5.1. Deposit of Monies into Fund**

1429 In accordance with the Act, the Village Treasurer shall
1430 promptly deposit in the Special Tax Allocation Fund, upon receipt,
1431 all Tax Increment Revenues, all other monies required by the Act or
1432 this Agreement to be deposited in the Fund, and all earnings
1433 realized upon the investment of such monies. Monies deposited in
1434 the Fund shall be used only for the purposes, and in the manner,
1435 specified in this Agreement and the Act.

1436 **5.2. Accounting of Monies Deposited in Fund**

1437 The Village shall establish such accounts and keep such books
1438 and records as are necessary to implement the provisions of this
1439 Agreement, the Act and the ordinances adopted in connection with
1440 each issue of Bonds. From and after the date of this Agreement,
1441 the Village shall provide the Developer with its annual financial
1442 report which shall include a statement of monies deposited into and
1443 disbursed from the Fund. Such report shall be undertaken in
1444 accordance with generally accepted auditing standards by a

certified public accounting firm designated by the Village. The Developer shall have the right to review the books and records of the Village which relate to the Fund and any fund or account holding proceeds of Revenue Bonds and Notes. At the request of the Developer, a separate compliance audit shall be performed to provide sufficient detail to enable the Parties to determine whether or not there has been compliance with the provisions of this Agreement and the Act. Both the accounting records and all financial audits of the Fund shall separately identify Phase I Tax Increment Revenues and Phase II Tax Increment Revenues. If the Developer requests a separate compliance audit of the Fund, the cost of such compliance audit shall not be a Village Project Cost unless the compliance audit indicates material non-compliance; in that event, the cost shall be a Village Project Cost.

5.3. Investment of Monies Deposited in the Fund

The Village shall invest monies in the Fund from time to time only in those investment vehicles as are identified, as of the date of this Agreement, in Section 2 of "An Act Relating to Certain Investments of Public Funds by Public Agencies" (Ill.Rev.Stat.Ch.85,SS902). All income earned on the investment of such monies shall be deposited in the Fund pursuant to Section 5.1 of this Article 5. The Village shall not transfer or loan monies deposited in the Fund to other Village funds.

ARTICLE 6. PAYMENT AND FINANCING OF PROJECT COSTS

6.1. Project Costs Other Than Village Project Costs

The Village shall pay and finance those Project Costs

1471 identified in Article 4 of this Agreement other than Village
1472 Project Costs solely from Tax Increment Revenues, the proceeds of
1473 Obligations, the proceeds of Developer Advances, grants from the
1474 State of Illinois or other monies made available for such purposes
1475 pursuant to the Act or the provisions of this Agreement. The
1476 Village shall reimburse the Developer for the Project Costs
1477 identified in Article 4 of this Agreement which the Developer has
1478 paid or incurred out of Tax Increment Revenues or other monies
1479 deposited in the Fund, the proceeds of Revenue Bonds, or other
1480 monies made available for such purposes pursuant to the Act or the
1481 provisions of this Agreement. The foregoing provision shall not
1482 preclude the Parties, as provided in Article 2 of this Agreement,
1483 from seeking and securing other funding sources for the
1484 construction of public improvements which are deemed reasonable or
1485 necessary to the implementation of the Economic Development Plan
1486 and the furtherance of the Economic Development Project.

1487 **6.2. Payment and Financing of Village Project Costs**

1488 All Village Project Costs shall be paid out of, or financed
1489 by, the Village's portion of the Phase I Allocated Tax Increment
1490 Revenue Amounts (as identified in Column 2 of Exhibit "B" attached
1491 hereto); those Developer Advances and donations specified in
1492 Sections 10.1, 10.2 and 10.5 of this Agreement, or the proceeds of
1493 General Obligation Bonds or Village Obligations secured solely by
1494 the Village's portion of the Phase I Allocated Tax Increment
1495 Revenue Amounts. Debt service on Village Obligations which are
1496 issued to pay Village Project Costs shall be paid solely out of the

Village's portion of the Phase I Allocated Tax Increment Revenue Amounts and such other monies as may be available to the Village for such purposes. Any portion of the Village's portion of the Phase I Allocated Tax Increment Revenue Amounts (as identified in Column 2 of Exhibit "B" attached hereto) which is not used or encumbered to pay or finance Village Project Costs or to pay such debt service shall be paid by the Village to the Cook County Collector for distribution to the Village and the affected Taxing Districts in accordance with the surplus distribution provisions of the Act. The portion of the Phase II Allocated Tax Increment Revenue Amounts which are distributed to the Village pursuant to Article 7 of this Agreement need not be used by the Village to pay or finance Village Project Costs. Notwithstanding any other provisions of this Agreement, the estimated three million dollar (\$3,000,000.00) cost for constructing the Sanitary Sewer Improvements shall not be considered a Village Project Cost although the Parties acknowledge the Village's intention to secure the "Build Illinois" grant referenced in Section 2.2 of this Agreement and the Village's agreement to apply the proceeds of such grant, if and when received, to the construction of the Sanitary Sewer Improvements. The Developer shall have no obligation to pay Village Project Costs, or to make Developer Advances for the purpose of paying Village Project Costs, except to the extent provided for in Sections 10.1, 10.2 and 10.5 of this Agreement.

6.3. Issuance of Bonds/Execution and Delivery of Notes

The Village shall issue Bonds and execute and deliver Notes,

1523 as necessary to fulfill its obligations under the terms of this
1524 Agreement, as follows:

1525 (a) From time to time, the Village, in its sole discretion,
1526 may issue its General Obligation Bonds, and tax increment
1527 revenue bonds secured solely by the Village's portion of
1528 the Phase I Allocated Tax Increment Revenue Amounts, in
1529 amounts sufficient to satisfy and pay for Project Costs,
1530 including without limitation Village Project Costs.
1531 Notwithstanding the foregoing, the Village shall not
1532 issue any General Obligation Bonds until it has received
1533 the SMG Occupancy Date Notice from the Developer;

1534 (b) From time to time, the Village pursuant to the terms of
1535 this Agreement and after it has received the SMG
1536 Occupancy Date Notice from the Developer, shall issue
1537 economic development project tax increment revenue bonds
1538 in amounts sufficient to satisfy and pay for the Project
1539 Costs described in Article 4 of this Agreement other than
1540 Village Project Costs (but in no event shall private
1541 financing costs incurred by the Developer in connection
1542 with the Economic Development Project be paid or
1543 reimbursed from the proceeds of Revenue Bonds);

1544 (c) To the extent:

1545 (1) The proceeds of Revenue Bonds are not sufficient to
1546 satisfy, or cannot be used to satisfy, the Project
1547 Costs described in Article 4 of this Agreement; and

1548 (2) The Tax Increment Revenues (other than the

1549 Allocated Tax Increment Revenue Amounts) then
1550 deposited in the Fund, are not, and will not be,
1551 sufficient or available to satisfy such Project
1552 Costs; and

1553 (3) Such Project Costs do not constitute Village
1554 Project Costs;

1555 the Developer, to the extent permitted by the Act, shall make a
1556 Developer Advance to satisfy such Project Costs and the Village
1557 shall execute and deliver its Note to evidence such Developer
1558 Advance. Notwithstanding the foregoing, the Developer shall not
1559 advance, or be required to advance, monies needed to satisfy debt
1560 service requirements on the Obligations, to establish reserves for
1561 the debt service requirements of the Obligations or to retire or
1562 redeem any Obligations and no Developer Advance shall be used for
1563 such purpose.

1564 **6.4. Limited Liability of the Village**

1565 The Village shall not be required to pay and finance any of
1566 those Project Costs identified in Article 4 of this Agreement
1567 (other than Village Project Costs) unless funds for such purposes
1568 are available from Tax Increment Revenues (other than Allocated Tax
1569 Increment Revenue Amounts), the proceeds of Obligations, the
1570 proceeds of Revenue Bonds, the proceeds of Developer Advances,
1571 grants from the State of Illinois or other monies made available
1572 for such purposes pursuant to the Act or the provisions of this
1573 Agreement. The Village shall not be required to reimburse the
1574 Developer for such Project Costs unless funds for such purposes are

1575 available from Tax Increment Revenues (other than Allocated Tax
1576 Increment Revenue Amounts), or other monies deposited from time to
1577 time in the Fund, the proceeds of Revenue Bonds or other monies
1578 made available for such purposes pursuant to the Act or the
1579 provisions of this Agreement.

1580 **6.5. Developer Advances**

1581 All monies paid to the Village by the Developer in furtherance
1582 of the Economic Development Project and pursuant to the provisions
1583 of this Agreement shall be accounted for separately within the Fund
1584 and all such advances shall be deemed Developer Advances, unless
1585 provided otherwise in this Agreement. All Developer Advances made
1586 in connection with the incurring of various Project Costs may be
1587 paid to the Village prior to or subsequent to the incurring of such
1588 Project Costs. All Developer Advances shall be evidenced by the
1589 Village's execution and delivery of a Note in accordance with the
1590 provisions of Article 8 of this Agreement. The Developer shall
1591 advance the funds necessary to pay any such Project Costs within
1592 fourteen (14) days of its receipt of a written request therefor
1593 from the Village Manager. Notwithstanding the foregoing, the
1594 Developer shall not be required to make any Developer Advance until
1595 the terms and conditions and the form of the Note which is to be
1596 executed and delivered to evidence such Developer Advance have been
1597 agreed upon by the Parties, which terms, conditions and form shall
1598 be consistent with the terms of this Agreement.

1599 **6.6. Procedure for Payment and Reimbursement to the Developer**
1600 **of Project Costs**

1601 All payment and reimbursement requests of the Developer in the

1602 amount of four thousand dollars (\$4,000.00) or less, and all
1603 payment or reimbursement requests of the Developer of more than
1604 four thousand dollars (\$4,000.00) made pursuant to contracts which
1605 have been previously approved by the Board of Trustees (whether
1606 pursuant to this Agreement or otherwise) shall be undertaken
1607 pursuant to the authorization of the Village Manager. In order to
1608 effect such payment or reimbursement (whether being made to the
1609 Developer or others), the Developer shall submit to the Village
1610 Manager, for his review and approval (which approval shall not be
1611 unreasonably withheld or delayed), all affidavits, lien waivers and
1612 other documentation as may be necessary to effect such payment or
1613 reimbursement. The Village Manager shall inform the appropriate
1614 Village financial officer of such approval within ten (10) working
1615 days of receipt of such documentation or, within said period, shall
1616 provide the Developer with a specific written explanation of his
1617 reasons for disapproving such request. Such Village financial
1618 officer shall effect payment or reimbursement within five (5)
1619 working days of receipt of the Village Manager's approval of any
1620 request for payment or reimbursement. All payment or reimbursement
1621 requests of the Developer of more than four thousand dollars
1622 (\$4,000.00) which are not being made pursuant to a contract which
1623 has been previously approved by the Board of Trustees shall be
1624 submitted to the Board of Trustees for its review and approval
1625 (which approval shall not be unreasonably withheld or delayed).
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ARTICLE 7. UTILIZATION OF TAX INCREMENT REVENUES

7.1. Tax Increment Revenues Received Prior to the
Phase I Tax Increment Revenue Commencement Date.

Prior to the Phase I Tax Increment Revenue Commencement Date, the Village from time to time shall disburse or allocate Tax Increment Revenues as they are received and deposited in the Fund, subject to the provisions of any ordinance authorizing the issuance of Revenue Bonds, as follows:

(1) First, the Village shall pay, or allocate amounts sufficient to satisfy, debt service requirements (and any increases in required reserves) due in the current year and coming due in the following year on all outstanding Revenue Bonds; and

(2) The balance, if any, shall be reserved by the Village to pay Project Costs (other than Village Project Costs) to be incurred within the next three (3) years and to provide reserves needed to secure outstanding Revenue Bonds and Notes.

7.2. Tax Increment Revenues Received On and Subsequent to
Phase I Tax Increment Revenue Commencement Date.

Commencing with the Phase I Tax Increment Revenue Commencement Date and continuing thereafter as Tax Increment Revenues are received and deposited in the Fund, the Village from time to time shall disburse or allocate Tax Increment Revenues, subject to the provisions of any ordinance authorizing the issuance of Revenue Bonds, as follows:

(1) First, subject to the last sentence of Section 8.2

1655 of this Agreement, the Village shall: (i) disburse
1656 or allocate Phase I Allocated Tax Increment Revenue
1657 Amounts to the Village up to the maximum amounts
1658 set forth in Column 1 of Exhibit "B" to this
1659 Agreement; and (ii) disburse or allocate the Phase
1660 II Allocated Tax Increment Revenue Amounts to the
1661 Village and the affected Taxing Districts in an
1662 aggregate amount that is determined by multiplying
1663 the percentages set forth on Exhibit "C" to this
1664 Agreement times the amount of Phase II Tax
1665 Increment Revenues received and deposited in the
1666 Fund, which Phase II Allocated Tax Increment
1667 Revenue Amounts shall be distributed to the Village
1668 and the affected Taxing Districts in accordance
1669 with the surplus distribution provisions of the
1670 Act;

1671 (2) Next, the Village shall pay, or allocate amounts
1672 sufficient to satisfy, debt service requirements
1673 due in the current year and coming due in the
1674 following year on all outstanding Revenue Bonds,
1675 and to provide reserves needed to secure
1676 outstanding Revenue Bonds;

1677 (3) Next, the Village shall pay, or allocate amounts
1678 sufficient to satisfy, debt service requirements
1679 due in the current year and coming due in the
1680 following year on all outstanding Notes (unless the

1681 holder of such Notes agrees, in writing, to defer
1682 such payment);

1683 (4) Next, the Village shall pay, or allocate amounts
1684 sufficient to pay, outstanding Project Costs (other
1685 than Village Project Costs); and

1686 (5) Next, the Village shall pay, or allocate amounts
1687 sufficient to pay Project Costs (other than Village
1688 Project Costs) to be incurred within three (3)
1689 years, or to purchase or redeem all or a portion of
1690 the outstanding Notes or Revenue Bonds, as the
1691 Parties by mutual agreement shall annually
1692 determine.

1693 (6) The balance, if any, shall be paid to the Cook
1694 County Collector for distribution to the Village
1695 and the affected Taxing Districts, for deposit in
1696 their appropriate accounts, in accordance with the
1697 surplus distribution provisions of the Act.

1698 **7.3. The Village's Distribution of The Phase I Allocated Tax**
1699 **Increment Revenue Amounts**

1700 Upon receipt, the Village, subject to the provisions of any
1701 ordinance authorizing the issuance of General Obligation Bonds, and
1702 from time to time shall disburse or allocate the Phase I Allocated
1703 Tax Increment Revenue Amounts as follows:

1704 (1) First, the Village may pay, or allocate an amount
1705 sufficient to satisfy, debt service requirements
1706 due in the current year and coming due in the
1707 following year on any outstanding Village

1708 Obligations;

1709 (2) Next, the Village shall pay, or allocate an amount

1710 sufficient to satisfy, outstanding Village Project

1711 Costs;

1712 (3) Next, the Village shall pay, or allocate an amount

1713 sufficient to reimburse the Village for, Village

1714 Project Costs which have been theretofore paid or

1715 incurred by the Village;

1716 (4) The balance, if any, shall be paid to the Cook

1717 County Collector for distribution to the Village

1718 and the affected Taxing Districts, for deposit in

1719 their appropriate accounts, in accordance with the

1720 surplus distribution provisions of the Act,

1721 provided, however, that the amount of Phase I Tax Increment Revenue

1722 Amounts paid to, or allocated by, the Village annually pursuant to

1723 paragraphs (1), (2), and (3) above shall not exceed the amounts

1724 specified in Column 2 of Exhibit "B" to this Agreement.

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1729 **ARTICLE 8. BONDS AND NOTES**

1730 **8.1. Issuance, Execution and Delivery**

1731 The Parties acknowledge that the acquisition of the Subject
1732 Property and the Development, and the construction of the Public
1733 Improvements, as provided in the Economic Development Plan and this
1734 Agreement, necessitate the use of proceeds from one or more issues
1735 or series of Revenue Bonds and from the execution and delivery of
1736 one or more Notes to pay Project Costs as provided in the Economic
1737 Development Plan and in this Agreement. Accordingly, the Village
1738 shall issue Revenue Bonds and execute and deliver Notes to finance
1739 Project Costs pursuant to the Act and the terms of this Agreement.
1740 Such Revenue Bonds shall be in the aggregate amounts which
1741 reasonably can be sold based upon the security which can be
1742 provided to the purchasers of such Revenue Bonds under the
1743 provisions of this Agreement. Such Revenue Bonds and Notes shall
1744 not be secured by the full faith and credit of the Village. One or
1745 more issues or series of Revenue Bonds to pay for Project Costs
1746 (other than Village Project Costs) may be sold at one or more times
1747 in order to implement the Economic Development Plan and the
1748 Economic Development Project, provided that the Village shall not
1749 be required to issue such Revenue Bonds until necessary credit
1750 enhancements and security, as may reasonably be deemed necessary by
1751 the Village, have been established. The amount of each series of
1752 Revenue Bonds to be issued by the Village shall be supported by a
1753 feasibility report prepared by, or at the direction of, the
1754 Developer, which shall reasonably determine the amount of each

series of such Revenue Bonds which can be issued and which shall be satisfactory to the Village. Such report shall analyze the projected cash flows (from Tax Increment Revenues and other sources), credit enhancements and other security provisions related to the issuance of such series of such Revenue Bonds, all then outstanding Revenue Bonds and all Revenue Bonds expected to be issued thereafter.

8.2. Interest Payment, Maturity, Priorities and Credit Enhancements

All Bonds issued pursuant to this Agreement shall bear interest at prevailing market rates for similar instruments and shall be subject to such other terms and conditions as are agreed to by the Village and the Developer, subject to the Village ordinances authorizing issuance of such Bonds and the provisions of this Agreement applicable at the time of issuance of the Bonds. All taxable Notes executed and delivered pursuant to this Agreement shall bear interest at the rate of interest announced from time to time by Continental Bank N.A. at Chicago, Illinois, as its "prime rate". If, for any reason, Continental Bank N.A. shall cease to announce a "prime rate" then such taxable Notes shall bear interest at the rate of interest announced from time to time by The First National Bank of Chicago at Chicago, Illinois, as its "prime rate" or "base rate". The Parties shall agree upon the interest rate to apply to any tax-exempt Notes executed and delivered pursuant to this Agreement and prior to their execution and delivery. All Bonds and Notes shall mature on or before September 11, 2012 and in any event within 20 years of the date of issuance or execution and

1782 delivery thereof. All Revenue Bonds issued, and all Notes executed
1783 and delivered, pursuant to this Agreement shall be limited
1784 obligations of the Village payable solely from Tax Increment
1785 Revenues (subject to the last sentence of this Section 8.2) and the
1786 other monies deposited from time to time in the Fund as a result of
1787 the investment of such Tax Increment Revenues, as and to the extent
1788 available for such purposes, and by such capitalized interest, debt
1789 service reserves and sinking funds or other available credit
1790 enhancements as may be provided by the ordinances adopted by the
1791 Village from time to time in conjunction with each issue of Revenue
1792 Bonds and each delivery of Notes. Revenue Bonds issued and
1793 outstanding pursuant to this Agreement shall be secured by a first
1794 priority pledge of amounts in the Fund subsequent and subordinate
1795 only to the obligation to make the payments due under Section
1796 7.2(1) (unless the Village shall have agreed upon an alternative
1797 mechanism to provide for the payments which are otherwise to be
1798 made under Section 7.2(1).)

1799 **8.3. Tax-Exempt Issues**

1800 The Village, as issuer of the Obligations, and the Developer
1801 shall cooperate with each other in an attempt to ensure that
1802 interest paid on the Obligations is exempt from Federal income
1803 taxes, provided that the Village shall not be required to take any
1804 action that is inconsistent with the provisions of this Agreement
1805 or the Village's rights herein.

1806 **8.4. SMG Completion Guaranty Note.**

1807 Upon the Village's issuance of any General Obligation Bonds

pursuant to Section 6.3(a) of this Agreement, the Developer shall execute and deliver to the Village a note guaranteeing substantial completion of the SMG Home Office Complex by the end of the calendar year in which the SMG Occupancy Date is to occur (as established by the SMG Occupancy Date Notice) and providing for the payment to the Village when due of liquidated damages to be agreed upon by the Parties. Notwithstanding the foregoing, the Village shall not issue any General Obligation Bonds until the Village has received the SMG Occupancy Date Notice from the Developer.

ARTICLE 9. TAX PROTESTS AND APPEALS/PAYMENT OF REAL ESTATE TAXES

9.1. Tax Protests and Appeals

The Parties acknowledge that certain assumptions will be made relative to the future assessed valuations of the Subject Property as and when the Development occurs and as and when Bonds are issued by the Village in connection with the Development. The Parties further acknowledge that attaining and maintaining said assessed valuations will have a material effect on the revenue available to pay debt service on such Bonds. Accordingly, for so long as such Bonds are outstanding, neither the Developer nor its agents, representatives, successors, assigns, tenants or transferees of any portion of the Subject Property shall initiate, take or perform any acts attempting to reduce the assessed valuation of any portion of the Subject Property if such reduction will cause the then-current total assessed valuation of the Subject Property to be less than the Total Minimum Assessed Valuation. The Total Minimum Assessed Valuation of the Subject Property shall be established, in writing,

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1835 by the Parties from time to time as Bonds are issued in connection
1836 with the development of the Subject Property. The foregoing shall
1837 not preclude or prohibit the Developer from protesting the assessed
1838 value of the SMG Home Office Complex for the limited purpose of
1839 establishing a partial year assessment of the building assessment
1840 for the year in which the SMG Occupancy Date occurs.

1841 **9.2. Miscellaneous**

1842 Except as otherwise expressly set forth in this Article 9, the
1843 Developer shall have the same right to challenge real estate taxes
1844 as is offered to the taxpayers and owners of other real property
1845 situated within Cook County, Illinois, but no such challenge shall
1846 be made without notice to the Village. The Developer further
1847 agrees, that to the extent it is obligated to pay any portion of
1848 the real estate tax bills for the Subject Property, it shall pay
1849 such taxes promptly before the date of delinquency of such tax
1850 bills. The Developer shall file necessary documentation with the
1851 appropriate governmental authorities in order to cause the Phase I
1852 Site, the Phase II Site and the PCMT Property to be identified by
1853 separate permanent tax index numbers so that the provisions of this
1854 Agreement can be given effect.

1855 **ARTICLE 10. SPECIFIC DEVELOPER ADVANCES AND DONATIONS**

1856
1857 **10.1. Developer Advance for Costs of Administering the**
1858 **Economic Development Plan**

1859 The Developer shall advance to the Village the sum of two
1860 hundred ten thousand dollars (\$210,000) to be used by the Village
1861 to pay for one (1) new employee and for clerical support to be
1862 hired specifically for the purpose of implementing and
02/27/90-H.E.

1863 administering the Economic Development Plan and Economic
1864 Development Project during the period commencing with the date of
1865 this Agreement and terminating on September 30, 1992. This sum
1866 shall be advanced to the Village in three (3) equal installments of
1867 seventy thousand dollars (\$70,000.00) each, with the first
1868 installment being advanced upon execution of this Agreement; the
1869 second installment being advanced on November 1, 1990; and the
1870 third installment being advanced on November 1, 1991. Funds
1871 advanced to the Village pursuant to this Section 10.1 shall be
1872 considered Developer Advances. Principal and interest obligations
1873 coming due on the Notes executed by the Village to evidence such
1874 Developer Advances shall not be paid out of the Village's portion
1875 of the Phase I Allocated Tax Increment Revenue Amounts (as
1876 identified in Column 2 of Exhibit "B" attached hereto).

1877 **10.2. Developer Advance for Police and Fire Personnel**

1878 The Developer shall advance to the Village the sum of one
1879 million, two hundred twenty-five thousand dollars (\$1,225,000)
1880 which the Developer agrees shall be used by the Village to pay the
1881 cost of hiring and training sufficient police officers and
1882 firefighters in the sole discretion of the Village, to serve the
1883 Development upon the Developer's occupancy of the SMG Home Office
1884 Complex. This sum shall be advanced to the Village as follows: an
1885 initial installment of five hundred twenty-five thousand dollars
1886 (\$525,000.00) shall be advanced to the Village on January 1, 1991;
1887 and the balance of seven hundred thousand dollars (\$700,000.00)
1888 shall be advanced to the Village on January 1, 1992. In addition,

commencing January 1, 1993 and continuing on the first day of each month thereafter through and including April 1 of the calendar year in which the Phase I Tax Increment Revenue Commencement Date is to occur, the Developer shall advance an amount which is not more than sixty-three thousand eight hundred dollars (\$63,800.00), which amount shall be increased by 10% on January 1, 1994 and by 10% on each January 1 thereafter, in order to reimburse the Village for police and fire personnel costs incurred by the Village for that period of time subsequent to the SMG Occupancy Date established by the SMG Occupancy Date Notice through and including April 30 of the calendar year in which the Phase I Tax Increment Revenue Commencement Date occurs. Notwithstanding the above, the Developer shall not be obligated to make monthly payments after January 1, 1993 for any months wherein the delay of the Phase I Tax Increment Revenue Commencement Date is due to breach by the Village as provided in Article 17 of this Agreement. Funds advanced to the Village pursuant to this Section 10.2 shall be considered Developer Advances. Principal and interest obligations coming due on the Notes executed by the Village to evidence such Developer Advances shall not be paid out of the Village's portion of the Phase I Allocated Tax Increment Revenue Amounts (as identified in Column 2 of Exhibit "B" attached hereto).

10.3. Donation of Village Municipal Site

The Developer shall donate and convey the Village Municipal Site to the Village, or cause such donation and conveyance to be made to the Village. Such donation and conveyance shall occur not

more than thirty (30) days after the date the Developer, or the Developer's nominee, acquires title to the portion of the Subject Property which contains the Village Municipal Site, and, in any event, such donation and conveyance shall occur prior to issuance of the first building permit for a structure which is to be constructed on the Subject Property. The donation of the Village Municipal Site shall constitute the donation of land required to be made to the Village for municipal purposes pursuant to the Beverly Annexation Agreement.

10.4. Donations Relating to Redevelopment of PCMT Property

(a) Loss of Contracted Service Income.

If, during the Term of this Agreement, the Poplar Creek Music Theater is permanently closed due to the redevelopment of the PCMT Property (hereafter referred to as "closure"), and provided such redevelopment occurs at the request of the Developer, the Developer shall make a one-time donation to the Village of the sum of four hundred fifty thousand dollars (\$450,000.00) for deposit in its general fund to compensate for loss of income to the Village for contracted services. Such donation shall be made on June 1 of the first year following the date of the Poplar Creek Music Theater closure as aforesaid. Funds donated to the Village pursuant to this Section 10.4(a) shall not be considered Developer Advances and such sums shall not be paid out of Tax Increment Revenues or out of the proceeds of Revenue Bonds.

1942 (b) Reductions in Equalized Assessed Value.

1943 If, as a result of the Poplar Creek Music Theater closure
1944 and the redevelopment of the PCMT Property, provided such
1945 redevelopment occurs at the request of the Developer, the
1946 equalized assessed value of that property, during the
1947 period of redevelopment, falls below the portion of the
1948 Total Initial Equalized Assessed Value which was
1949 attributable to the property, the Developer shall pay to
1950 the Village an amount equal to the Village's loss in real
1951 property tax revenue occasioned by said closure. Such
1952 loss in real property tax revenue shall be computed by
1953 multiplying: (i) the difference between that portion of
1954 the Total Initial Equalized Assessed Value which was
1955 attributable to the property and the then equalized
1956 assessed value of such property; by (ii) the Village's
1957 real estate tax rate for the applicable tax year. This
1958 donation shall be recomputed every year and shall
1959 continue for so long as the Village realizes a loss in
1960 real property tax revenue as a result of the closure of
1961 the Poplar Creek Music Theater (as computed above) or
1962 until this Agreement terminates, whichever first occurs.
1963 Funds paid to the Village pursuant to this Section
1964 10.4(b) may be used by the Village for any legal
1965 purposes. Such funds shall not be considered Developer
1966 Advances and such funds shall not be paid out of Tax
1967 Increment Revenues or out of the proceeds of Revenue

1968 Bonds. Notwithstanding the foregoing, no such funds
1969 shall be paid to the Village unless the Village shall
1970 first have obtained the opinion of a nationally
1971 recognized bond counsel that such payment will not affect
1972 the tax-exempt status of any outstanding Bonds.

1973 (c) Municipal Entertainment Tax.

1974 If, as a result of the closure of the Poplar Creek Music
1975 Theater and the redevelopment of the PCMT Property,
1976 provided such redevelopment occurs at the request of the
1977 Developer, then the Developer shall pay to the Village an
1978 amount equal to the amount of municipal entertainment tax
1979 revenue which was realized by the Village in the year
1980 immediately preceding such closure provided, however,
1981 that the Developer shall only be required to pay such
1982 sums to the Village for so long as the Village shall be
1983 entitled to receive funds under Section 10.4(b). Funds
1984 paid to the Village pursuant to this Section 10.4(c) may
1985 be used by the Village for any legal purposes. Such
1986 funds shall not be considered Developer Advances and such
1987 funds shall not be paid out of Tax Increment Revenues or
1988 out of the proceeds of Revenue Bonds.

1989 10.5. Developer Advance for Miscellaneous Village Project
1990 Costs

1991 The Developer shall advance to the Village, within thirty (30)
1992 days of the date of this Agreement, the sum of fifty-eight thousand
1993 three hundred dollars (\$58,300.00) in order to reimburse the
1994 Village for the fees of Chapman & Cutler (in the amount of

1995 \$40,000.00) and the fees of Teska & Associates, Inc. (in the amount
1996 of \$18,300.00), which fees were incurred by the Village in
1997 establishing the Economic Development Project and preparing the
1998 Economic Development Plan. Funds advanced to the Village pursuant
1999 to this Section 10.5 shall be considered a Developer Advance.
2000 Principal and interest obligations coming due on the Note executed
2001 by the Village to evidence such Developer Advance shall not be paid
2002 out of the Village's portion of the Phase I Allocated Tax Increment
2003 Revenue Amounts (as identified in Column 2 of Exhibit "B" attached
2004 hereto).

2005 **10.6. No Other Donations**

2006 In consideration of the donations which the Developer has
2007 agreed to make in accordance with the provisions of this Article
2008 10, and in further consideration of the fact that the Parties
2009 contemplate satisfying and financing all public costs of developing
2010 the Subject Property pursuant to the provisions of this Agreement,
2011 the Developer shall not be required by the Village, directly or
2012 indirectly, to make any other donations of land or cash to the
2013 Village or any other public body as a result of the Development of
2014 the Subject Property or in furtherance of the Economic Development
2015 Project. Specifically, but without limitation, the Developer shall
2016 not be required by the Village: (i) to pay any impact fees for
2017 Village Project Costs, or for improvements which are to be financed
2018 pursuant to this Agreement (other than customarily and uniformly
2019 imposed sewer and water connection and user charges, building and
2020 occupancy permit fees and engineering inspection and plan review

2021 fees); or (ii) to make any donations of land or cash to the Village
2022 for school, park, library or other public purposes (whether
2023 pursuant to the Beverly Annexation Agreement, the Nederlander
2024 Annexation Agreement, or otherwise).

2025 **ARTICLE 11. NOTICES**

2026 All notices required or permitted to be given pursuant to the
2027 provisions of this Agreement shall be in writing and shall be
2028 served on the Parties, either personally, with evidence of receipt,
2029 or by certified or registered mail, return receipt requested, as
2030 follows:

2031 **if to the Village:** Village of Hoffman Estates
2032 1200 North Gannon Drive
2033 Hoffman Estates, Illinois 60196
2034 Attn: Village Manager

2035 **with copies to:** Village of Hoffman Estates
2036 1200 North Gannon Drive
2037 Hoffman Estates, Illinois 60196
2038 Attn: Corporation Counsel

2039 Burke & Ryan
2040 33 North Dearborn Street
2041 Suite 402
2042 Chicago, Illinois 60602
2043 Attn: William E. Ryan, Esq.

2044 **if to the Developer:** Sears, Roebuck and Co.
2045 Sears Tower
2046 Chicago, Illinois 60684
2047 Attn: Senior Vice President
2048 Resources and Administration,
2049 Department 707

2050 **with copies to:** Sears, Roebuck and Co.
2051 Sears Tower
2052 Chicago, Illinois 60684
2053 Attn: General Counsel
2054 Merchandise Group
2055 Department 766

2056
2057
2058
2059
2060
2061
2062

2063 Tully & Weinstein
2064 77 West Washington Street
2065 Suite 1500
2066 Chicago, Illinois 60602
2067 Attn: Thomas Tully, Esq.

2068 and
2069

2070
2071 Rudnick & Wolfe
2072 203 North LaSalle Street
2073 Suite 1800
2074 Chicago, Illinois 60601
2075 Attn: J. Kevin Garvey, Esq.
2076 Harold W. Francke, Esq.
2077

2078 Either party's address may be changed from time to time by such
2079 party giving notice, as provided above, to the other party.
2080 Notices delivered personally shall be deemed given on receipt.
2081 Notices delivered by certified or registered mail shall be deemed
2082 given two (2) business days after the date of post-marking.

2083 **ARTICLE 12. MEMORANDUM OF AGREEMENT**

2084 Neither of the Parties shall record this Agreement, but each
2085 party agrees to execute and to deliver to the other party, when
2086 this Agreement is executed and delivered, multiple copies of a
2087 Memorandum of this Agreement in a form acceptable to their
2088 respective counsel. Either of the Parties, at its sole expense,
2089 may record such Memorandum in the Office of the Recorder of Deeds
2090 of Cook County, Illinois. Such Memorandum shall recite the
2091 covenants contained in Article 9 of this Agreement and such
2092 covenants shall run with the land and be binding upon the Developer
2093 and its agents, representatives, successors, assigns, tenants and
2094 transferees for so long as any Bonds are issued and outstanding.
2095 If and when the Bonds have been paid in full and redeemed (other
2096 than by a refunding), the covenants contained in Article 9 of this

2097 Agreement shall become null and void and the Village shall issue a
2098 release of such covenants in recordable form and deliver such
2099 release to the Developer for recording in the Office of the Cook
2100 County Recorder of Deeds.

2101 **ARTICLE 13. PERMITTED DELAYS**

2102 Neither of the Parties shall be deemed to be in default
2103 hereunder in the performance of any obligation where delays or
2104 defaults in such performance are due to war, insurrection, strikes,
2105 lockouts, riots, floods, earthquakes, fires, casualties, acts of
2106 God, acts of the public enemy, epidemics, quarantine restrictions,
2107 freight embargoes and lack of transportation, or the inability to
2108 secure, or the revocation or suspension of, necessary governmental
2109 licenses, permits, authorizations and approvals or the failure of
2110 the other party to this Agreement to keep and perform the covenants
2111 and obligations on its part to be kept and performed. An extension
2112 of time for any such cause shall be for the period of the delay,
2113 which period shall commence to run from the time of the
2114 commencement of the cause, provided that written notice by the
2115 party claiming such extension is sent to the other party not more
2116 than twenty (20) days after the commencement of such cause.

2117 **ARTICLE 14. MORTGAGE HOLDERS**

2118 **14.1. Rights and Obligations**

2119 The holder of any mortgage, deed of trust or other security
2120 interest, the lessor under any ground lease, and the grantee under
2121 any other conveyance for financing, shall not be obligated by the
2122 provisions of this Agreement to construct or complete the

2123 improvements which are contemplated by this Agreement or the
2124 Economic Development Plan or to guarantee such construction or
2125 completion, notwithstanding the collateral assignment of this
2126 Agreement to such party by the Developer. Nothing in this
2127 Agreement shall be deemed to permit or authorize any such holder,
2128 lessor or grantee to devote the Subject Property to any uses, or
2129 to construct any improvements thereon, other than those uses or
2130 improvements provided for or authorized by this Agreement or the
2131 Amendment to the Annexation Agreements, any such unauthorized use
2132 or improvements being expressly prohibited.

2133 **14.2. Notice/Assumption of Obligations**

2134 Whenever the Village shall deliver any notice or demand to the
2135 Developer with respect to any alleged breach or default by the
2136 Developer hereunder, the Village, at the same time, shall deliver
2137 to each holder of record of any mortgage, deed of trust or other
2138 security interest, and to the lessor of any ground lease and to the
2139 grantee under any other conveyance for financing, a copy of such
2140 notice or demand, provided the Village has been advised in writing
2141 by the Developer, or such holder, lessor, or grantee, of the name
2142 and address of any such holder, lessor or grantee. Each such
2143 holder, lessee or grantee (insofar as the rights of the Village are
2144 concerned) shall have the same right to cure or remedy, or to
2145 commence to cure or remedy, any such default, provided, however,
2146 that in the event of a default by the Developer hereunder which is
2147 not curable by such holder, lessor or grantee (e.g., insolvency or
2148 bankruptcy of the Developer), such holder, lessor or grantee shall

2149 be deemed to have cured such noncurable defaults by its execution
2150 of the assumption agreement contemplated in the later portions of
2151 this Section 14.2. Nothing contained in this Agreement shall be
2152 deemed to permit or authorize such holder, lessor or grantee to
2153 undertake or continue the construction or completion of the
2154 improvements contemplated by this Agreement (beyond the extent
2155 necessary to conserve or protect the improvements or construction
2156 already made) without first having expressly assumed the
2157 Developer's obligations (with respect to the portion of the Subject
2158 Property on which the holder, lessor or grantee has a security
2159 interest) to the Village by written agreement satisfactory to the
2160 Village. In such event, the holder, lessor or grantee shall agree
2161 to complete, in the manner provided in this Agreement, the
2162 improvements to which the security interest of such holder, lessor
2163 or grantee relates, and submit evidence satisfactory to the Village
2164 that it has the qualifications and financial responsibility
2165 necessary to perform such obligations. The assumption agreement
2166 shall provide that such holder, lessor or grantee shall only be
2167 deemed to have assumed the Developer's obligations for as long as
2168 they have a security interest in the Subject Property, and that the
2169 Village's sole and exclusive remedy for a breach of the assumption
2170 agreement is forfeiture of the equity interest of such holder,
2171 lessor or grantee in the Subject Property. No such assumption
2172 agreement shall relieve the Developer of any of its obligations
2173 under this Agreement. Any such holder, lessor or grantee properly
2174 completing such improvement shall be entitled, upon written request

2175 made to the Village, to a certificate of occupancy from the Village
2176 with respect to such improvements. To the extent of a conflict,
2177 ambiguity or inconsistency between the provisions of this Section
2178 14.2 and the provisions of any underlying agreement between the
2179 Developer and a holder, lessor or grantee of any security interest
2180 in the Subject Property, the former shall control.

2181 14.3. Village Right to Cure Defaults

2182 In the event the Developer, or any entity acquiring title to
2183 the Subject Property, or any portion thereof, defaults in the
2184 construction or completion of construction of the improvements
2185 contemplated by the provisions of this Agreement, and such default
2186 is also a default under any mortgage, deed of trust, other security
2187 instrument or lease-back or obligation to the grantee under any
2188 other conveyance for financing, and the holder, lessor or grantee,
2189 as the case may be, elects not to exercise its option to cure such
2190 default, the Village may cure such default, or cause the same to be
2191 cured, prior to completion of any foreclosure, termination of lease
2192 or other remedial proceeding as a result of such default. In such
2193 event, the Village, or its nominee, shall be entitled to
2194 reimbursement from the Developer, or such other entity, of all
2195 reasonable costs and expenses incurred by the Village in curing the
2196 default (including reasonable attorney's fees). The Village shall
2197 also be entitled to a lien upon the Subject Property to the extent
2198 of such reasonable costs and expenses (including reasonable
2199 attorneys' fees). Any such lien shall be subject to the lien of
2200 the mortgages, deeds of trust and other security instruments, and

2201 to the prior interests of a lessor under any lease-back or ground
2202 lease, executed for the purpose of obtaining funds to purchase or
2203 develop the Subject Property, to construct the improvements
2204 contemplated by this Agreement, to finance the costs of such
2205 construction or to pay the costs reasonably related to the
2206 Developer's performing its obligations under this Agreement.

2207 **ARTICLE 15. NO DISCRIMINATION-CONSTRUCTION**

2208 The Developer, in connection with the development of the
2209 Subject Property, shall not discriminate against any employee or
2210 applicant for employment because of race, color, religion, sex or
2211 national origin. The Developer shall take affirmative action to
2212 require that applicants are employed, and that employees are
2213 treated during employment, without regard to their race, color,
2214 religion, sex or national origin. Such action shall include, but
2215 not be limited to, the following: employment upgrading, demotion,
2216 or transfer; recruitment or recruitment advertising, solicitations
2217 or advertisements for employees; layoff or termination; rates of
2218 pay or other forms of compensation; and selection for training,
2219 including apprenticeship. The Developer agrees to post in
2220 conspicuous places, available to employees and applicants for
2221 employment, notices which may be provided by the Village setting
2222 forth the provisions of this non-discrimination clause.

2223 **ARTICLE 16. NO DISCRIMINATION-USE**

2224 The Developer shall not discriminate against any person, or
2225 group of persons, on account of sex, race, color, religion or
2226 national origin in the sale, lease, sublease, transfer, use,

2227 occupancy, tenure or enjoyment of the Subject Property, nor shall
2228 the Developer establish or permit, or knowingly allow any person
2229 claiming under or through the Developer to establish or permit, any
2230 such practice or practices of discrimination with reference to the
2231 selection, location, number, use, or occupancy of tenants, lessees,
2232 subtenants, sublessees, or vendees of any portion of the Subject
2233 Property.

2234 **ARTICLE 17. REMEDIES-LIABILITY**

2235 **17.1. Developer Remedies**

2236 The sole remedies of the Developer in the event of a breach by
2237 the Village in any of the terms of this Agreement shall be: (i) to
2238 institute legal action for specific performance, mandamus or
2239 mandatory injunction against the Village (including the right to
2240 require the Village to make any payment required to be made by this
2241 Agreement and to issue Revenue Bonds); and (ii) to maintain an
2242 action at law for the Developer's actual (but not consequential or
2243 punitive) damages, provided, however, that such right to maintain
2244 an action for actual damages shall be limited to a Village default
2245 in the performance of one or more of the following Village
2246 obligations, which default results in a breach of the terms of this
2247 Agreement:

- 2248 (a) The obligation to issue Revenue Bonds, to the extent and
2249 when provided for by the provisions of this Agreement;
2250 (b) The obligation to make payments to the Developer or
2251 others on construction contracts which have been approved
2252 by the Board of Trustees pursuant to the provisions of

2253 this Agreement; and

2254 (c) The obligation to reimburse the Developer for Project
2255 Costs which the Developer has paid or incurred, to the
2256 extent and when provided for by the provisions of this
2257 Agreement.

2258 In the event the Developer obtains a final non-appealable judgment
2259 against the Village for either legal or equitable relief as
2260 provided above, as a result of a breach of this Agreement by the
2261 Village, the Developer shall be entitled to recover the reasonable
2262 attorneys fees and court costs it has incurred in securing such
2263 judgment.

2264 Notwithstanding the foregoing, the Developer shall have the
2265 right to terminate this Agreement at any time before it occupies
2266 any part of the SMG Home Office Complex upon paying the Village all
2267 costs, expenses, claims, liabilities and all fees including
2268 attorneys fees that the Village has incurred that relate directly
2269 to the creation of the Economic Development Project, the
2270 preparation and adoption of the Economic Development Plan and this
2271 Agreement, as more fully set forth in Article 20.

2272 17.2. Village Remedies

2273 The Village shall have all remedies at law or equity against
2274 the Developer for any breach by the Developer in any of the terms
2275 of this Agreement including the right to reasonable attorneys fees
2276 and court costs, subject to the Developer's right to terminate this
2277 Agreement as set forth in Section 17.1. Notwithstanding the
2278 foregoing, the Village shall not have the right to maintain an

2279 action against the Developer for consequential or punitive damages.

2280 17.3. Defaults-Rights to Cure

2281 Subject to the extensions of time set forth in Article 13 of
2282 this Agreement, failure or delay by either party to perform any
2283 term or provision of this Agreement shall constitute a default
2284 under this Agreement. The party who so fails or delays must, upon
2285 receipt of written notice of the existence of such default,
2286 immediately commence to cure, correct or remedy such default and
2287 thereafter proceed with diligence to cure such default. The party
2288 claiming such default shall give written notice of the alleged
2289 default to the party alleged to be in default specifying the
2290 default complained of by the injured party. Except as required to
2291 protect against further damages, and except as otherwise expressly
2292 provided in this Agreement, the injured party may not institute
2293 proceedings against the party in default until thirty (30) days
2294 after giving such notice. If such default is cured within such
2295 thirty (30) day period, the default shall not be deemed to
2296 constitute a breach of this Agreement. If the default is one which
2297 cannot reasonably be cured within thirty (30) days, and if the
2298 defaulting party shall commence to cure the same within such thirty
2299 (30) day period, said thirty (30) day period shall be extended for
2300 such time as is reasonably necessary for the curing of the same, so
2301 long as the defaulting party diligently proceeds to cure such
2302 default. If such default is cured within such extended period, the
2303 default shall not be deemed to constitute a breach of this
2304 Agreement. However, a default not cured as provided above shall

2305 constitute a breach of this Agreement. Except as otherwise
2306 expressly provided in this Agreement, any failure or delay by
2307 either party in asserting any of its rights or remedies as to any
2308 default or alleged default or breach shall not operate as a waiver
2309 of any such default or breach or any rights or remedies it may have
2310 as a result of such default or breach.

2311 17.4. Acts and Omissions of Default

2312 At the option of the Village, each of the following acts or
2313 omissions of the Developer shall constitute a default under this
2314 Agreement:

2315 (a) The Developer transfers, or suffers any involuntary
2316 transfer of, the Subject Property in violation of the
2317 terms of Article 18 of this Agreement;

2318 (b) The Developer files a petition seeking any debtor relief
2319 or executes any instrument for the purpose of effecting
2320 a composition of creditors;

2321 (c) The Developer makes an assignment for the benefit of
2322 creditors; or

2323 (d) The Developer is adjudicated as bankrupt.

2324 17.5. Dispute Resolution

2325 (a) If, at any time during the Term of this Agreement, the
2326 Parties do not agree on any of the following three
2327 issues:

2328 (i) Whether or not a given Project Cost which is
2329 to be paid or financed pursuant to the terms
2330 of this Agreement is "reasonable or necessary"

2331 to the Economic Development Project;

2332 (ii) Whether a given Project Cost constitutes a

2333 Village Project Cost; or

2334 (iii) Whether the Parties have fulfilled their

2335 respective obligations under this Agreement

2336 relative to the issuance of Revenue Bonds;

2337 then, at the option of either the Village or the

2338 Developer, the Parties shall attempt to resolve such

2339 disagreement pursuant to the provisions of this Section

2340 17.5. If either the Village or the Developer seeks to

2341 exercise such option, notice of such election shall be

2342 given to the other party within thirty (30) days of the

2343 date it first becomes apparent to the Parties that such

2344 disagreement exists.

2345 (b) If, pursuant to the provisions of the foregoing paragraph

2346 (a), either of the Parties shall seek to resolve a

2347 disagreement that pertains to one of the issues described

2348 in said paragraph (a), such party shall select an expert,

2349 at such party's cost, who shall have the responsibility

2350 to consider the issue in dispute and render an opinion,

2351 within twenty-one (21) days, relative to the resolution

2352 of such disagreement. If, following the receipt of such

2353 opinion, the other party wishes to retain its own expert,

2354 such other party shall have the right to do so, at such

2355 party's cost, and, in such event, such expert shall also

2356 proceed to consider the issue in dispute and render an

2357 opinion, within twenty-one (21) days, relative to the
2358 resolution of such disagreement. If, after receipt of
2359 the foregoing opinions, the Parties are still unable to
2360 resolve their disagreement, the Parties' respective
2361 experts shall jointly designate a third expert, at a cost
2362 to be shared equally by the Parties, who shall have the
2363 responsibility to consider the issue in dispute and
2364 render such expert's opinion, within twenty-one (21)
2365 days, relative to the resolution of such disagreement.
2366 None of the opinions rendered by any of the foregoing
2367 experts shall be binding on the Parties unless both
2368 Parties agree otherwise.

2369 (c) Either of the Parties shall have the right, after
2370 completing the procedure provided for in paragraph (b)
2371 above, to seek the resolution of a disagreement in a
2372 trial de novo before the Circuit Court of Cook County.
2373 No damages (actual, consequential or punitive) shall be
2374 claimed by either of the Parties during the period the
2375 Parties are attempting to resolve, or as a result of the
2376 Parties' attempt to resolve, a disagreement pursuant to
2377 the provisions of the foregoing paragraph (b).

2378 **17.6. Right to Continue Construction Activities**

2379 The Parties acknowledge that one of the primary objectives of
2380 this Agreement is the Developer's timely completion of the SMG Home
2381 Office Complex. Accordingly, the Village shall not take any action
2382 to delay, hinder or prevent the construction of the SMG Home Office

2383 Complex, or the construction of any of the Public Site
2384 Improvements, notwithstanding any actual or alleged breach or
2385 default by the Developer in any of the obligations imposed on the
2386 Developer by the terms of this Agreement that relate to the payment
2387 or financing of Project Costs, and notwithstanding the pendency of
2388 any dispute resolution or court proceeding under Section 17.5
2389 hereof. The foregoing shall not preclude the Village from taking
2390 any action against the Developer in the event of a violation of any
2391 law, ordinance or regulation or the exercise of the Village's
2392 police powers in the public interest.

2393 ARTICLE 18. ASSIGNMENT OF DEVELOPER RIGHTS AND
2394 OBLIGATIONS/CONVEYANCES OF THE SUBJECT PROPERTY

2395 18.1. Assignment of Developer Rights and Obligations

2396 The rights and obligations of the Developer under this
2397 Agreement shall not be assigned except as provided by this Section
2398 18.1.

2399 (a) The term "Developer", as used in this Section 18.1, shall
2400 mean only:

2401 (i) Sears, Roebuck and Co., a New York
2402 corporation;

2403 (ii) Any entity which is a parent, controlling
2404 shareholder (i.e. owning fifty-one percent
2405 (51%) or more of the capital stock), or fifty-
2406 one percent (51%) or more owned subsidiary of
2407 Sears, Roebuck and Co.;

2408 (iii) Any entity which is owned, to the extent of at
2409 least a fifty-one percent (51%) controlling

2410 interest, by Sears, Roebuck and Co. or an
2411 entity described in the foregoing paragraph
2412 (ii); and

2413 (iv) Any entity to whom the Developer has conveyed
2414 a portion of the Subject Property consisting
2415 of one hundred (100) acres or more and
2416 assigned its rights under this Agreement
2417 pursuant to Section 18.2.

2418 (b) Except as provided in paragraph (c) of this Section 18.1,
2419 all rights of the Developer established by the terms of
2420 this Agreement shall inure solely to the benefit of the
2421 Developer and shall not be subject to assignment by the
2422 Developer and, specifically but without limitation, the
2423 Village shall not be required to issue Revenue Bonds in
2424 order to satisfy and pay for Project Costs except for the
2425 Developer.

2426 (c) The following rights established by the terms of this
2427 Agreement shall inure to the benefit of: (i) the
2428 Developer; and (ii) any assignee of such rights acquiring
2429 an ownership interest in the Subject Property pursuant to
2430 a sale or conveyance of a portion of the Subject Property
2431 (or pursuant to an assignment of an interest in a
2432 corporation, partnership or land trust) that does not
2433 violate Section 18.2 of this Agreement:

2434 (i) The right to have costs incurred in
2435 furtherance of the Economic Development Plan

2436 and the Development deemed Project Costs (to
2437 the fullest extent permitted by law) and,
2438 subject to the rights of holders of any
2439 Obligations and subject to the provisions of
2440 paragraph (b) above, to have such Project
2441 Costs paid for, financed or reimbursed
2442 pursuant to Article 6 of this Agreement;
2443 (ii) The right to challenge real estate taxes (as
2444 provided in Section 9.2 of this Agreement);
2445 (iii) The right to develop the Subject Property
2446 without regard to then existing Village
2447 donation requirements (as provided in Section
2448 10.6 of this Agreement);
2449 (iv) The right to maintain an action against the
2450 Village and to only recover reasonable
2451 attorneys fees and court costs from the
2452 Village in the event of a Village default
2453 under the provisions of this Agreement (as
2454 provided in Section 17.1 of this Agreement);
2455 and
2456 (v) The right to sell, convey, mortgage, lease and
2457 otherwise transfer interests in and to the
2458 Subject Property (subject to the limitations
2459 of, and as provided for in, Section 18.2 of
2460 this Agreement).
2461 (d) Except as provided in paragraph (e) of this Section 18.1,

2462 all obligations, including Developer's indemnification
2463 obligations under Article 20 of this Agreement, of the
2464 Developer established by the terms of this Agreement
2465 shall be solely the obligations of the Developer.

2466 (e) With respect to the development of the various portions
2467 of the Subject Property, the following obligations shall
2468 be the obligations of the party or entity undertaking
2469 such development or causing such development to be
2470 undertaken:

2471 (i) The obligation to devote such portion of the
2472 Subject Property as is being developed to only
2473 the uses specified in the Economic Development
2474 Plan (as provided in Section 3.4 of this
2475 Agreement);

2476 (ii) The obligation to procure and maintain
2477 insurance covering construction on such
2478 portion of the Subject Property (as provided
2479 in Section 3.5 of this Agreement);

2480 (iii) The obligation to submit plats and plans, and
2481 to undertake construction, in accordance with
2482 the codes and ordinances of the Village (as
2483 provided in Section 3.6 of this Agreement);

2484 (iv) The obligation to refrain from protesting real
2485 estate taxes or assessed valuations of the
2486 Subject Property (as provided in Section 9.1
2487 of this Agreement);

2488 (v) The obligation to grant and provide
2489 dedications, easements and rights of way
2490 necessary to the development of such portion
2491 of the Subject Property (as provided in
2492 Article 19 of this Agreement); and
2493 (vi) The obligation to indemnify the Village
2494 against costs and expenses incurred by the
2495 Village as a result of construction activities
2496 on such portion of the Subject Property and as
2497 a result of the negligence of general
2498 contractors, subcontractors and their
2499 respective employees (as provided in Article
2500 20 of this Agreement).

2501 18.2. Conveyances of the Subject Property

2502 The Developer shall have the right to sell, convey, mortgage,
2503 lease and otherwise transfer interests in and to the Subject
2504 Property without limitation and without the approval of the Village
2505 provided, however, that:

2506 (a) The Developer shall not sell or transfer any interest in
2507 and to that portion of the Phase I Site on which the SMG
2508 Home Office Complex is to be constructed until issuance
2509 by the Village of the first occupancy permit for the SMG
2510 Home Office Complex and until after the Developer's
2511 Merchandise Group, or another entity, division or group
2512 controlled or owned by Developer, shall have occupied the
2513 SMG Home Office Complex for at least ten (10) years

2514 following the SMG Occupancy Date; and

2515 (b) If:

2516 (1) The Developer seeks to sell, transfer or convey any

2517 portion of the Subject Property consisting of one

2518 hundred (100) acres or more; and

2519 (2) The Developer seeks to be relieved of liability

2520 under this Agreement with respect to such portion

2521 of the Subject Property; and

2522 (3) Bonds are outstanding;

2523 then the Village shall have the right to require that any

2524 purchaser/grantee of such portion of the Subject Property

2525 satisfy the following conditions and meet the following

2526 standards:

2527 (i) Any such purchaser/grantee shall have the

2528 experience and financial responsibility

2529 necessary to fulfill the Developer's

2530 obligations under this Agreement (to the

2531 extent applicable to such portion of the

2532 Subject Property);

2533 (ii) Any such purchaser/grantee shall have expressly

2534 assumed, in writing, the Developer's

2535 obligations under this Agreement (to the

2536 extent applicable to such portion of the

2537 Subject Property);

2538 (iii) All instruments confirming the matters

2539 specified in the foregoing paragraphs (i) and

2540 (ii) Shall be submitted to the Village for
2541 review and approval (which approval shall not
2542 be unreasonably withheld or delayed).

2543 Upon the occurrence of a sale or conveyance that satisfies the
2544 foregoing conditions and meets the foregoing standards, the
2545 Developer shall be relieved of all liability under this Agreement
2546 (to the extent applicable to such portion of the Subject Property).
2547 No conveyance of a portion of the Subject Property consisting of
2548 one hundred (100) acres or more that fails to satisfy the foregoing
2549 conditions or meet the foregoing conditions, shall be deemed to
2550 relieve the Developer of any of its obligations under this
2551 Agreement with respect to such portion of the Subject Property.

2552 The provisions of this Section 18.2 are intended to be
2553 applicable to a sale and assignment of a beneficial interest in a
2554 land trust, a sale and assignment of partnership interests, a sale
2555 and transfer of capital stock in a corporation, and other
2556 comparable transactions which would effectively frustrate the
2557 spirit and intent of these provisions. However, the provisions of
2558 this Section 18.2 are not intended to preclude or be applicable to,
2559 and such provisions shall not preclude or be applicable to, the
2560 financing, refinancing, sale-leaseback or leasing of any portion of
2561 the Subject Property by the Developer; the sale or transfer of any
2562 interest in and to the Subject Property to an entity controlled or
2563 owned by the Developer; or an assignment of a beneficial interest
2564 in a land trust to, the assignment of partnership interests to, or
2565 the transfer of capital stock in a corporation to an entity

2566 controlled or owned by the Developer. Any entity in which the
2567 Developer holds more than a fifty percent (50%) interest shall be
2568 considered to be controlled or owned by the Developer for purposes
2569 of this Section 18.2.

2570 18.3. The terms and provisions of this Agreement shall be
2571 binding upon and inure to the benefit of the Corporate Authorities
2572 (including successor Corporate Authorities).

2573 ARTICLE 19. DEDICATIONS AND EASEMENTS

2574 The Developer, at no cost to the Village, shall grant and
2575 provide all reasonable street dedications and permanent and
2576 temporary easements and rights-of-way reasonably requested by the
2577 Village in connection with the Development, including, but not
2578 limited to, easements and rights-of-way for vehicular access,
2579 pedestrian access, parking facilities, sanitary sewers, storm
2580 drains, water lines, street lighting, and electrical power,
2581 telephone, cable TV and natural gas lines.

2582 ARTICLE 20. DEVELOPER INDEMNIFICATION

2583 (a) The Developer shall indemnify and hold harmless the
2584 Village, its agents, officers and employees, against all
2585 injuries, deaths, losses, damages, claims, suits,
2586 liabilities (including any liability under the Illinois
2587 Structural Work Act, known as the Scaffolding Act),
2588 judgments, costs and any reasonable expenses of
2589 consultants, lawyers and other reasonable expenses of any
2590 type, except Village Project Costs, that are directly or
2591 indirectly related to the creation of the Economic

2592 Development Project, the preparation or adoption of the
2593 Economic Development Plan and this Agreement, including,
2594 but not limited to any breach of the terms of this
2595 Agreement by the Developer; the sale and use of any Bonds
2596 pursuant to this Agreement (other than General Obligation
2597 Bonds and other Village Obligations secured solely by the
2598 Village's portion of the Allocated Tax Increment Revenue
2599 Amounts); the Developer's improvement of the Subject
2600 Property and construction of the Development, and from
2601 any negligence or reckless misconduct of the Developer,
2602 its general contractor or its employees and agents, or of
2603 a subcontractor of the general contractor or his
2604 employees, if any, in connection therewith, and the
2605 Developer shall, at its own expense, appear, defend and
2606 pay all charges of attorneys and costs and other expenses
2607 arising therefrom or incurred in connection with any
2608 claim for which the Developer is responsible hereunder,
2609 and, if any judgment shall be rendered against the
2610 Village, its agents, officials or employees in any such
2611 action involving any claim for which the Developer is
2612 responsible hereunder, the Developer shall, at its own
2613 expense, satisfy and discharge the same. The Developer
2614 expressly understands and agrees that the insurance
2615 protection required by Section 3.5 of this Agreement
2616 shall in no way limit the responsibility to indemnify,
2617 hold harmless and defend as herein provided in this

2618 Article 20, but to the extent a particular claim, action
2619 or liability is covered by such insurance, the Developer
2620 shall be released of liability hereunder.

2621 (b) The indemnification obligations of the Developer
2622 contained in the foregoing paragraph (a) shall not extend
2623 to injuries, deaths, losses, damages, claims, suits,
2624 liabilities, judgments, costs and expenses incurred as a
2625 result of or arising out of: (i) the negligence or
2626 reckless misconduct of the Village, its officers, agents,
2627 employees and contractors; (ii) obligations which the
2628 Village has agreed to pay or incur pursuant to the
2629 provisions of this Agreement; (iii) the Village's breach
2630 in any of the terms of this Agreement; (iv) the Village's
2631 construction of the Public Works and Improvements and the
2632 Sanitary Sewer Improvements; and (iv) the Village's
2633 improvement and use of the Village Municipal Site.

2634 **ARTICLE 21. AMENDMENT/INTEGRATION**

2635 This Agreement, and any exhibits attached hereto, may be
2636 amended only by the mutual consent of the Parties with, on the part
2637 of the Village, the adoption of an ordinance or resolution of the
2638 Board of Trustees approving said amendment, as provided by law, and
2639 by the execution of said amendment by the Parties or their
2640 successors in interest. The Amendment to the Annexation Agreements
2641 and this Agreement, when both are fully executed by the Parties,
2642 shall constitute the entire understanding and agreement of the
2643 Parties relative to the subject matter hereof superseding all prior

2644 agreements, negotiations and discussions relative to such subject
2645 matter. All exhibits to this Agreement are expressly incorporated
2646 herein by this reference thereto.

2647 **ARTICLE 22. DUPLICATE ORIGINALS**

2648 This Agreement is executed in four (4) duplicate originals,
2649 each of which is deemed to be an original.

2650 **ARTICLE 23. TIME IS OF THE ESSENCE**

2651 Time is of the essence of this Agreement.

2652 **ARTICLE 24. TERM**

2653 This Agreement shall remain in full force and effect until
2654 termination of the Project Area and the Economic Development Plan
2655 or until otherwise terminated pursuant to the terms hereof.

2656 **ARTICLE 25. INTERPRETATION**

2657 The laws of the State of Illinois shall govern the
2658 interpretation and enforcement of the terms and provisions of this
2659 Agreement.

2660 **ARTICLE 26. SEVERABILITY.**

2661 In the event any phrase, paragraph, article or portion of this
2662 Agreement is found to be invalid, illegal or unenforceable by any
2663 court of competent jurisdiction, such finding of invalidity,
2664 illegality or unenforceability as to that phrase, paragraph,
2665 article or portion shall not affect the validity, legality or
2666 enforceability of the remaining portions of this Agreement.

2667 **ARTICLE 27. CAPTIONS AND PRONOUNS.**

2668 The captions and headings of the various articles and sections
2669 of this Agreement are for convenience only, and are not to be

2670 construed as confining, defining, expanding or limiting in any way
2671 the scope or intent of the provisions hereof. Whenever the context
2672 requires or permits, the singular shall include the plural, the
2673 plural shall include the singular, and the masculine, feminine and
2674 neuter shall be freely interchangeable.
2675

2676 **IN WITNESS WHEREOF** this Agreement has been duly authorized and
2677 approved by the President and Board of Trustees of the Village of
2678 Hoffman Estates, Cook and Kane Counties, Illinois, and executed by
2679 the Parties as of the day and year first above set forth.

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VILLAGE:

VILLAGE OF HOFFMAN ESTATES, an
Illinois home rule municipal
corporation

By: Michael J. O'Malley
Its: Village President

ATTEST:

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By: Virginia Mary Hayter
Its: Village Clerk
(Seal)

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DEVELOPER:

SEARS, ROEBUCK AND CO., A New
York corporation

By: Michael L. Bojko
Its: Chairman and Chief
Executive Officer
Merchandise Group

ATTEST:

APPROVED: D

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By: D. J. Jeruc
Its: Assistant Secretary
(Seal)

LIST OF EXHIBITS

EXHIBIT A	Summary of Acquisition Contracts
EXHIBIT B	Phase I - Allocated Tax Increment Revenue Amounts
EXHIBIT C	Phase II - Allocated Tax Increment Revenue Amounts
EXHIBIT D	Legal Description of the Phase I Site
EXHIBIT E	Legal Description of the Phase II Site
EXHIBIT F	Legal Description of the Hoffman Estates Economic Development Project Area
EXHIBIT G	Depiction of the Hoffman Estates Economic Development Project Area
EXHIBIT H	Phase I Development Public Site Improvements
EXHIBIT I	Phase II Development Public Site Improvements
EXHIBIT J	Public Works and Improvements
EXHIBIT K	General Depiction of Portion of Phase I Site to Contain SMG Home Office Complex
EXHIBIT L	SMG Occupancy Date Notice
EXHIBIT M	Legal Description of Subject Property
EXHIBIT N	Contracts in Existence or To Be Let by the Developer
EXHIBIT O	Property Assembly Costs Paid, Incurred, or Known by the Developer as of the Date of this Agreement
EXHIBIT P	Project Costs Paid or Incurred by the Developer as of the Date of this Agreement in Connection with Construction of the Public Site Improvements

EXHIBIT A

SUMMARY OF ACQUISITION CONTRACTS

1. Origer Property - Two (2) Contracts - Approximately 520 acres

I. Date of Contracts: June 23, 1989

II. Owners:

1. Approximately 360 acres are owned by two (2) land trusts having as beneficiary The Thomas J. Origer Inter-Vivos Trust;
2. Approximately 160 acres are owned by two (2) land trusts with beneficial owners being the children of Thomas J. Origer (seven individuals).

III. Purchase Price:

1. \$ * per square foot;
2. \$ * (in the aggregate)

IV. Closing Date: The thirtieth (30th) day following the earlier to occur of: (i) satisfaction of zoning contingency; and (ii) June 23, 1990. If extended the Closing Date shall be no later than October 24, 1990.

B. Nederlander Property - Two (2) Contracts - Approximately 221 acres

I. Date of Contracts: June 24, 1989.

II. Owner: LaSalle National Bank Trust No. 54757 having as beneficiary Ned-Prop, an Illinois joint venture.

III. Purchase Price:

1. \$ * per square foot;
2. \$ * (in the aggregate)

IV. Closing Date: The thirtieth (30th) day following the earlier to occur of: (i) satisfaction of zoning contingency; and (ii) June 25, 1990. If extended the Closing Date shall be no later than September 24, 1990.

V. Leaseback: Poplar Creek Music Theatre is to be leased to the Seller at closing for an initial period (with renewal rights provided it does not interfere with Sears' development) for a rent of \$1.00 per year.

* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

C. Studz Property - Approximately 40 acres

- I. Date of Contract: June 25, 1989
- II. Owner: Charter Bank and Trust Company Trust No. 769 having as beneficiary Ruth Studz
- III. Purchase Price:
 1. \$ * per square foot (based on 40 acres);
 2. \$ * (in the aggregate)
- IV. Closing Date: the thirtieth (30th) day following the earlier to occur of: (i) satisfaction of zoning and annexation contingency; and (ii) June 25, 1990. If extended the Closing Date shall be no later than October 24, 1990.

D. "Watson" Property - Approximately 7 acres

- I. Date of Contract: June 26, 1989
- II. Owner: Sutton Road Partnership, an Illinois general partnership (Contract Buyer)
- III. Purchase Price:
 1. \$ * per square foot
 2. \$ * in the aggregate
- IV. Closing Date: Property was acquired on September 7, 1989.

E. Totals:

Acreage: Approximately 788 acres

Purchase Price: Approximately \$ * or \$ * per square foot

* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

EXHIBIT B

PHASE I
ALLOCATED TAX INCREMENT REVENUE AMOUNTS

<u>YEAR</u>	<u>COLUMN 1</u> Total Amount of Phase I Tax Increment Revenues which are to be Received and Deposited in Fund for Benefit of Village and Other Taxing Districts	<u>COLUMN 2</u> Portions of Column 1 Amounts which are Subject to Disbursement to the Village
1st Year of Payment	\$2,000,000	\$1,500,000
2nd	2,100,000	1,575,000
3rd	2,205,000	1,653,750
4th	2,315,250	1,736,438
5th	2,431,013	1,823,260
6th	3,000,000	2,250,000
7th	3,150,000	2,362,500
8th	3,307,500	2,480,625
9th	3,472,875	2,604,656
10th	3,646,519	2,734,889
11th	3,828,845	2,871,634
12th	4,020,287	3,015,215
13th	4,221,301	3,165,976
14th	4,432,366	3,324,275
15th	4,653,985	3,490,488
16th	4,886,684	3,665,013
17th	5,131,018	3,848,264
18th	5,387,569	4,040,677
19th	5,656,947	4,242,711
20th	5,939,795	4,454,846

EXHIBIT C

PHASE II
ALLOCATED TAX INCREMENT REVENUE AMOUNTS

<u>YEAR</u>	<u>PERCENTAGE OF PHASE II TAX INCREMENT REVENUES WHICH ARE TO BE PAID TO TAXING DISTRICTS</u>
1st year of payment	15
2nd	15
3rd	15
4th	15
5th	15
6th	20
7th	20
8th	20
9th	20
10th	20
11th	25
12th	25
13th	25
14th	25
15th	25
16th	30
17th	30
18th	30
19th	30
20th	30

EXHIBIT D

LEGAL DESCRIPTION OF THE PHASE I SITE

That part of the Northeast 1/4 of Section 31, and that part of the Northwest 1/4 of Section 32, all in Township 42 North, Range 9 East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of said Section 32, thence Westerly along the Southline of the Northeast 1/4 of said Section 31, North 89 degrees 42 minutes 57 seconds West, a distance of 1,320.70 feet to a point on the West line of the East 1/2 of the Northeast 1/4 of said Section 31, said point being the point of beginning; thence Northerly along said West line, North 00 degrees 25 minutes 04 seconds East, a distance of 2,432.03 feet to a point on the Southwesterly line of Higgins Road (Route 72) as recorded per documents: No. 12079013, recorded November 8, 1937, No. 12284905, recorded March 20, 1939, No. 12309896, recorded May 10, 1939, and No. 12647599, recorded March 27, 1941, the following three courses:

- (1) A distance of 189.90 feet along an arc of a circle, convex to the Southwest, having a radius of 10,257.06 feet, and whose chord of 189.90 feet bears South 82 degrees 59 minutes 46 seconds East;
- (2) South 83 degrees 31 minutes 35 seconds East, a distance of 2,317.28 feet;
- (3) A distance of 1,239.98 feet along an arc of a circle, convex to the Northeast, having a radius of 9,965.07 feet, and whose chord of 1,239.18 feet bears South 79 degrees 57 minutes 42 seconds East;

Thence South 13 degrees 53 minutes 26 seconds West, 29.15 feet; thence Southerly along a curve tangent to the last described course, concave Easterly having a radius of 1,550.00 feet, an arc distance of 582.50 feet, and whose chord bears South 03 degrees 07 minutes 28 seconds West, a distance of 579.08 feet; thence South 07 degrees 38 minutes 30 seconds East, tangent to the last described course, a distance of 150.00 feet; thence Southwesterly along a curve concave Northwesterly having a radius of 1,350.00 feet, an arc distance of 2,402.00 feet, and whose chord bears South 43 degrees 19 minutes 50 seconds West, a distance of 2,097.46 feet; thence North 85 degrees 41 minutes 51 seconds West, tangent to the last described course, a distance of 150.00 feet; thence Northwesterly along a curve concave Northeasterly having a radius of 3,450.00 feet, an arc distance of 539.63 feet, and whose chord bears North 81 degrees 12 minutes 59 seconds West, a distance of 539.08 feet; thence North 76 degrees 44 minutes 08 seconds West, tangent to the last described course, a distance of 170.49 feet; thence Northwest-erly along a curve concave Southwesterly having a radius of 3,550.00 feet, an arc distance of 789.05 feet and whose chord bears North 83 degrees 06 minutes 11 seconds West, a distance of 787.43 feet; thence North 89 degrees 28 minutes 15 seconds West, a distance of 642.09 feet to a point on the West line of the East 1/2 of the Northeast 1/4 of aforementioned Section 31; thence Northerly along said West line, North 00 degrees 31 minutes 45 seconds East a distance of 116.16 feet to the point of beginning all in Cook County, Illinois. Containing 8,762,404 square feet (201.157 acres) of land, more or less.

EXHIBIT E

LEGAL DESCRIPTION OF THE PHASE II SITE

The Phase II Site is legally described as that certain real property legally described on Exhibit M as the Subject Property excepting therefrom that certain real property legally described on Exhibit D as the Phase I Site.

EXHIBIT F

LEGAL DESCRIPTION OF THE HOFFMAN ESTATES
ECONOMIC DEVELOPMENT PROJECT AREA

That part of the East 1/2 of the East 1/2 of Section 31, lying South of the Northerly line of Higgins Road (S.R. 72) and North of the Southerly line of Section 31, and excluding property owned by the Northwest Tollroad; also that part of Section 32, lying South of the Northerly line of Higgins Road; North of the Southerly line of the Section 32 and excepting those portions of right-of-way (100' wide) belonging to E. J. & E. Railway (except the southerly 300' within the Northeast 1/4 of Section 32); and excluding property owned by the Northwest Tollway; also that part of the Southwest 1/4 of the Northwest 1/4 and the West 1/2 of the Southwest 1/4 of Section 33 lying south of the Northerly line of Higgins Road and North of the Southerly line of Section 33 except that portion of property owned by the Northwest Tollway; also the entire right-of-way of Beverly Road from the Northerly Line of Higgins Road to the Southerly Line of Section 31; also, that part of the east 1/2 of the Southwest 1/4 of Section 33 along with the Southeast 1/4 of the Northwest 1/4 of Section 33 lying south of the southerly line of Higgins Road right-of-way, except that portion of property owned by the Northwest Tollway, all of the above being in Township 42 North, Range 9, West of the Third Principal Meridian, in Cook County, Illinois. Also, that part of Section 4 lying Easterly of the Easterly right of way line of the Elgin, Joliet and Eastern Railroad Company and North of the Northerly Line of the Northern Illinois State Toll Highway Commission right of way, and that part of the West half of the West Half of Section 3, Township 41, North, Range 9, East of the Third Principal Meridian, lying North of the Northerly line of the Northern Illinois State Toll Highway Commission right of way, in Cook County, Illinois, and that part of the East half of the West half of fractional Section 3, lying North of the Northerly right of way line of the Northern Illinois State Toll Highway, excepting therefrom that part thereof conveyed to the Northern Illinois State Toll Highway Commission by instrument recorded May 13, 1957, as document 16902251 in Township 41 North, Range 9, East of the Third Principal Meridian, in Cook County, Illinois, and also except the following described parcels located in Township 42 North, Range 9, West of the Third Principal Meridian in Cook County, Illinois.

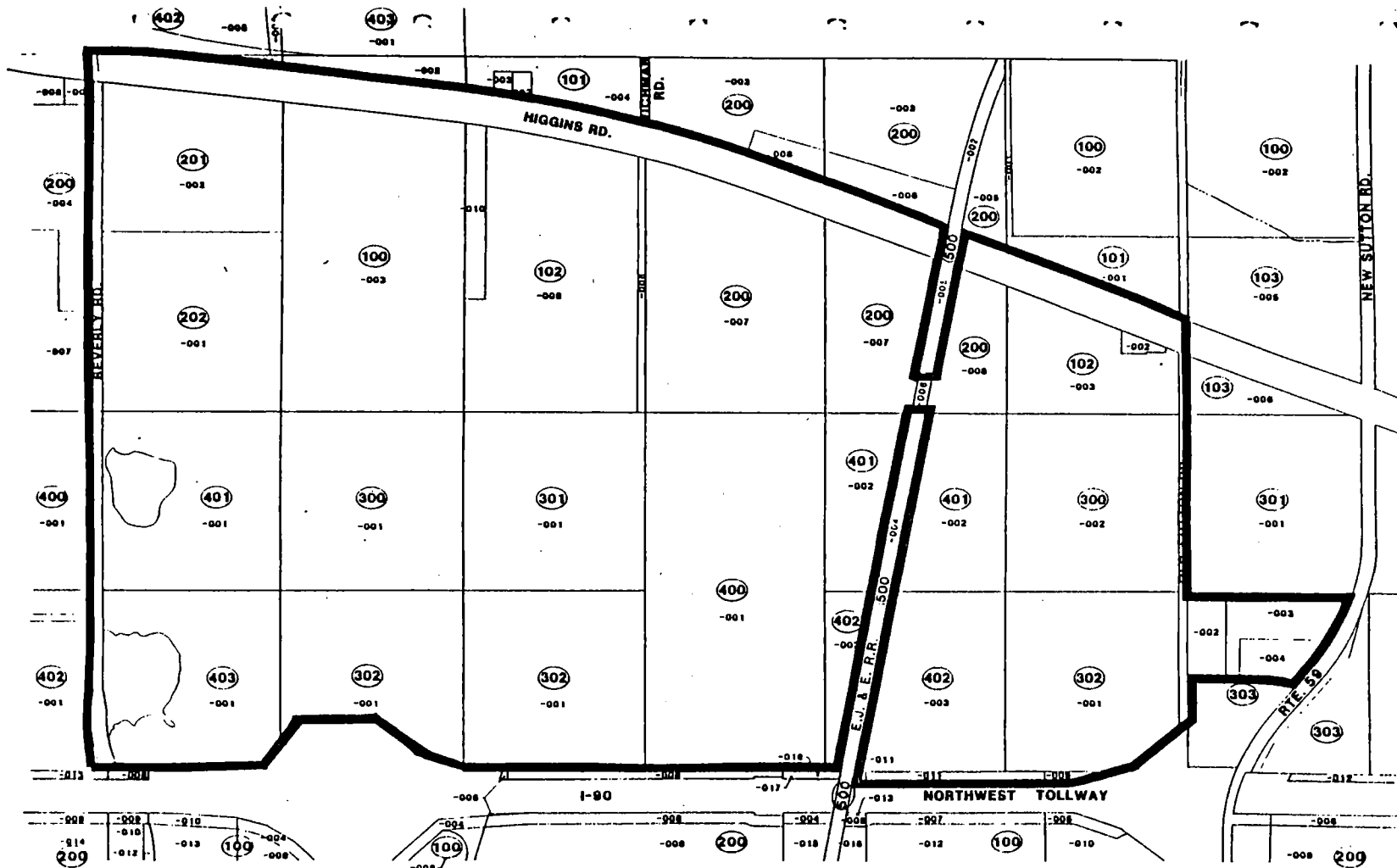
That part of the South 20.04 chains of the East 1/2 of the Southwest 1/4 of Section 33 lying South and East of the Northwesterly line of property owned by the Northwest Tollroad (Interstate 90) and lying south and East of New Sutton Road (S.R. 59);

Also that part of the Northeast 1/4 of the Southwest 1/4 of Section 33 lying West of the Westerly line of the New Sutton Road (S.R. 59) Right of Way;

Also that part of the Southeast 1/4 of the Northwest 1/4 of Section 33 lying South of the Southerly line of the Higgins Road (S.R. 72) Right of Way.

EXHIBIT G

**DEPICTION OF THE HOFFMAN ESTATES ECONOMIC
DEVELOPMENT PROJECT AREA**



**ECONOMIC DEVELOPMENT PROJECT BOUNDARY
HOFFMAN ESTATES
ECONOMIC DEVELOPMENT AREA**

VILLAGE OF HOFFMAN ESTATES

TESKA
ASSOCIATES
INC.



EXHIBIT H

PHASE I DEVELOPMENT PUBLIC SITE IMPROVEMENTS

The following is a description of the Phase I Development Public Site Improvements, as that term is used in the Agreement. The Phase I Development Public Site Improvements consist of those public streets, public utilities and other public site improvements which are constructed, or to be constructed, by, or under the direction of, the Developer, and all activities which are undertaken in connection with such construction: (i) within the Phase I Site; or (ii) outside the boundaries of the Phase I Site but within the Project Area and in connection with, or in furtherance of, the use, occupancy, and development of the Phase I Site; or (iii) outside the boundaries of the Project Area (to the extent such public streets, public utilities and public improvements are essential to the preparation of the Project Area in accordance with the Economic Development Plan). Natural gas, electric and telephone service shall not be included within the definition of "public utilities", as used above, except to the extent that they relate to natural gas, electric and telephone service improvements which are to be dedicated to, and owned by, the Village (e.g. public street lights).

The Phase I Site encompasses that portion of the Subject Property consisting of approximately two hundred (200) acres, which is located in the northwest corner of the Subject Property.

Specifically, the Phase I Development Public Site Improvements consist of the following:

A. DEMOLITION

Demolition and removal of existing structures within the Phase I Site and removal of all waste piles, underground storage tanks, if any, and similar conditions.

B. EARTHWORK

Earth-moving and grading within the Project Area to prepare for the construction and installation of the Phase I Development Public Site Improvements and construction of necessary storm water management improvements.

C. WETLANDS MITIGATION

Processing of necessary wetlands regulatory applications, satisfaction of all wetlands regulatory requirements, wetlands protection, and engineering and implementation of wetlands mitigation plans for the Subject Property.

D. SANITARY SEWER

Construction of necessary sanitary sewer mains and lines; lifts station and appurtenances; and acquisition of the easements and rights-of-way necessary to such construction. These improvements include, without limitation, essential trunk sewer mains from existing Metropolitan Water

Reclamation District lines to the Project Area; sewer mains and lines through the Phase II Site and to the Phase I Site; and arterial sewer lines, and feeder lines from arterial sewer lines to structures, as required throughout the Phase I Site.

E. WATER MAINS

Construction of necessary potable water mains and lines and appurtenant facilities, and acquisition of the easements and rights-of-way necessary to such construction. This includes the construction of trunk mains located outside the Project Area that connect the Project Area to existing Village or Joint Area Water Association (JAWA) water mains; and the construction of arterial water lines through the Phase II Site, as necessary to connect the Subject Property to the existing municipal water system.

F. ROADWAYS

Construction of necessary roadways and ancillary roadway improvements and acquisition of the easements and right-of-ways necessary to such construction. These roadways and ancillary roadway improvements shall include the following (or their equivalents):

- (a) *
- (b) *
- (c) *
- (d) *

Construction of each of the foregoing roadway improvements may include, but shall not be limited to: (i) levelling and grading of earth; (ii) preparation of roadbed; (iii) paving; (iv) construction of curbs, sidewalks and gutters; (v) landscaping of medians and shoulders; (vi) installation of storm sewers; (vii) installation of street lighting; and (viii) installation of traffic signals.

G. PIPELINE RELOCATION

Relocation of existing pipeline(s) so as to permit construction of infrastructure and structures.

H. INDIRECT COSTS

Permit costs and fees related to the construction of all Phase I Development Public Site Improvements.

* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

EXHIBIT I

PHASE II DEVELOPMENT PUBLIC SITE IMPROVEMENTS

The following is a description of the Phase II Development Public Site Improvements, as that term is used in the Agreement. The Phase II Development Public Site Improvements consist of those public streets, public utilities and other public site improvements which are constructed, or to be constructed, by, or under the direction of, either the Village or the Developer, and all activities which are undertaken in connection with such construction: (i) within the Phase II Site; or (ii) outside the boundaries of the Phase II Site but within the Project Area and in connection with, or in furtherance of, the use, occupancy, and development of the Phase II Site; or (iii) outside the boundaries of the Project Area (to the extent such public streets, public utilities and public improvements are essential to the preparation of the Project Area for use in accordance with the Economic Development Plan). Natural gas, electric and telephone service shall not be included within the definition of "public utilities", as used above, except to the extent that they relate to natural gas, electric and telephone service improvements which are to be dedicated to, and owned by, the Village (e.g. public street lights).

The Phase II Site consists of the Subject Property, exclusive of the Phase I Site. The Phase II Site consists of approximately five hundred eighty-eight (588) acres and includes the PCMT Property.

Specifically, the Phase II Development Public Site Improvements consist of the following:

A. DEMOLITION

Demolition and removal of the remaining structures within the Project Area.

B. EARTHWORK

Earth-moving and grading within the Project Area to prepare for the construction and installation of the Phase II Development Public Site Improvements and construction of necessary storm water management improvements.

C. SANITARY SEWER

Construction of necessary sanitary sewer mains and lines, lift station and appurtenances, and acquisition of the easements and right-of-ways necessary to such construction. This includes, without limitation, construction of sanitary sewer mains and lines throughout the Phase II Site; construction of arterial lines from sanitary sewer trunk mains to structures located within the Phase II Site; and construction of all other sanitary sewer mains and lines, lift station and appurtenances that are essential to the preparation of the Project Area in accordance with the Economic Development Plan (except for those sewer mains and lines, lift stations and appurtenances constructed as Phase I Development Public Site Improvements).

D. WATER MAINS

Construction of necessary potable water mains and lines and appurtenant facilities, and acquisition of the easements and rights-of-way necessary to such construction. This includes, without limitation, construction of feeder lines from arterial lines to structures located within the Phase II Site; and all other water mains and lines and other appurtenant facilities essential to the preparation of the Project Area in accordance with the Economic Development Plan (except for those water mains and lines and appurtenant facilities constructed as Phase I Development Public Site Improvements).

E. ROADWAYS

Construction of necessary roadways and ancillary roadway improvements and acquisition of the easements and rights-of-way necessary to such construction. These roadways and ancillary roadway improvements shall include the following (or their equivalents):

- (a) *
- (b) *
- (c) *
- (d) *
- (e) *
- (f) *
- (g) *
- (h) *
- (i) *
- (j) *

Construction of each of the foregoing roadway improvements may include, but shall not be limited to: (i) levelling and grading of earth; (ii) preparation of roadbed; (iii) paving; (iv) construction of curbs, sidewalks and gutters; (v) landscaping of medians and shoulders; (vi) installation of storm sewers; (vii) installation of street lighting; and (viii) installation of traffic signals.

F. INDIRECT COSTS

Permit costs and fees related to the construction of all Phase II Development Public Site Improvements.

* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

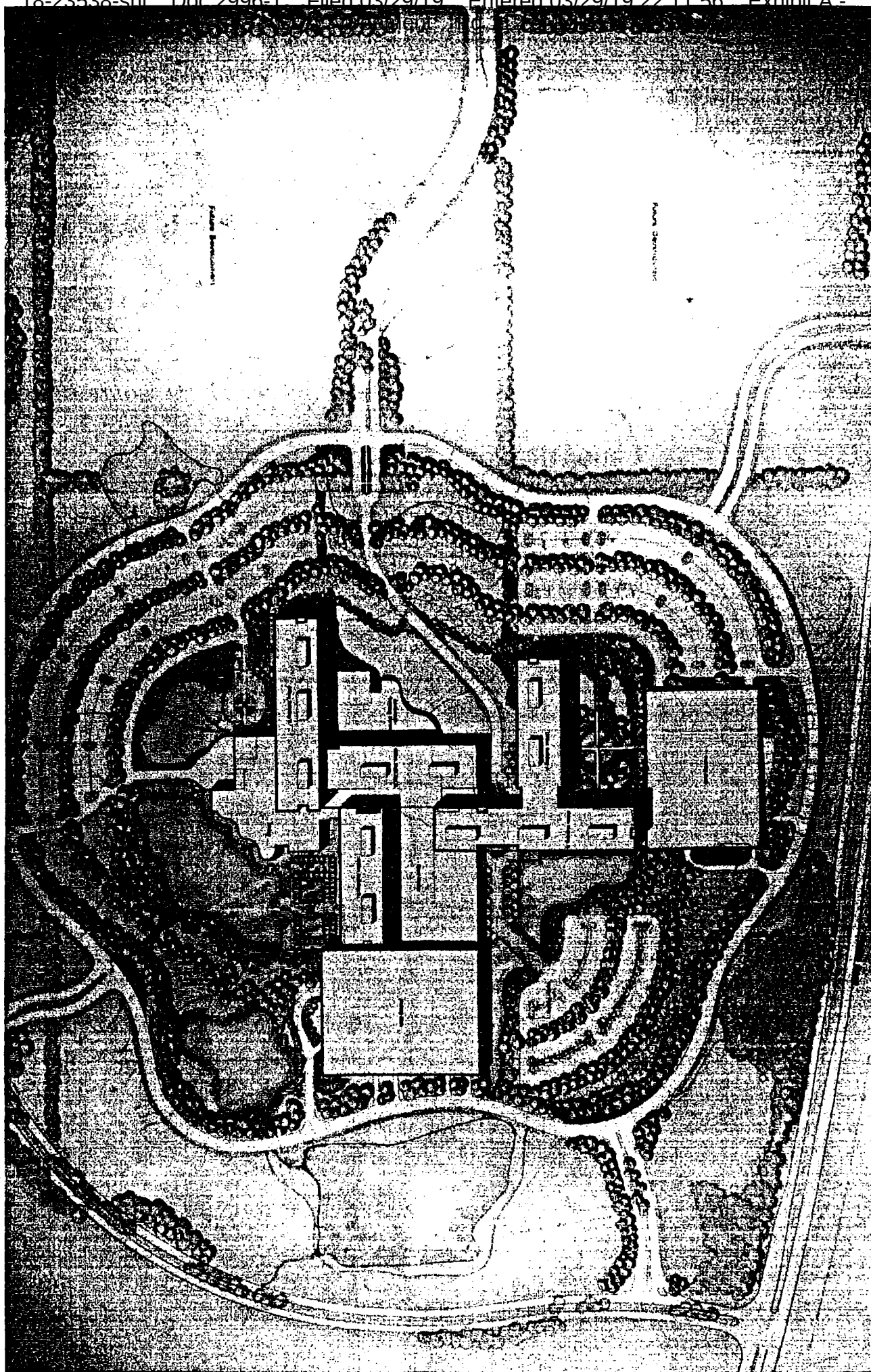
Exhibit "J"
1 of 1

PUBLIC WORKS AND IMPROVEMENTS

The following is a list of Public Works and Improvements which are to be constructed, by or on behalf of the Village and all activities which are undertaken in connection with such construction, which are authorized by this Agreement and the Economic Development Plan which the Parties agree are reasonable or necessary. This Exhibit may be amended by the parties, from time to time, pursuant to the provisions of this Agreement.

1. **VILLAGE MUNICIPAL FACILITY**
2. **VILLAGE WATER TANK**
3. **INDIRECT COSTS**

Fees related to the construction of Public Works and Improvements listed herein or as otherwise allowed by the provisions of this Agreement.



SMG OCCUPANCY DATE NOTICE

Village of Hoffman Estates
1200 North Gannon Drive
Hoffman Estates, IL 60196
Attn: Village Manager

Village of Hoffman Estates
1200 North Gannon Drive
Hoffman Estates, IL 60196
Attn: Corporation Counsel

**Re: SMG Occupancy Date Notice Given Pursuant to
Economic Development Agreement Dated By and Between
the Village of Hoffman Estates and Sears, Roebuck
and Co., ("Agreement")**

Date: _____

Ladies and Gentlemen:

This will confirm that Sears, Roebuck and Co., as Developer under the Agreement, has received the last governmental permit or approval necessary to its commencement of construction of the SMG Home Office Complex.

All terms not otherwise defined herein shall have the meanings given them in the Agreement.

**SEARS, ROEBUCK AND CO., a
New York Corporation**

By: _____
Its: _____

**CC: Senior Vice President - Sears/Resources and Administration
General Counsel - Sears Merchandise Group
Thomas Tully, Esq.
J. Kevin Garvey, Esq.
Harold W. Francke, Esq.**

EXHIBIT M

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THAT PART OF THE EAST $\frac{1}{2}$ OF SECTION 31, AND THAT PART OF SECTION 32, AND THAT PART OF THE WEST $\frac{1}{2}$ OF SECTION 33, ALL IN TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALSO THAT PART OF FRACTIONAL SECTION 3, AND FRACTIONAL SECTION 4, BOTH IN TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 32;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 32, NORTH $89^{\circ}41'27''$ WEST, A DISTANCE OF 1343.48 FEET;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF TOLLWAY I-90 AS CONVEYED TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, PER DOCUMENT NO. 17 400 695, RECORDED DECEMBER 10, 1958, THE FOLLOWING FIVE COURSES:

- (1) NORTH $73^{\circ}44'44''$ WEST, A DISTANCE OF 291.20 FEET;
- (2) NORTH $53^{\circ}26'13''$ WEST, A DISTANCE OF 372.02 FEET;
- (3) NORTH $89^{\circ}41'27''$ WEST, A DISTANCE OF 550.00 FEET;
- (4) SOUTH $54^{\circ}08'29''$ WEST, A DISTANCE OF 461.68 FEET;
- (5) SOUTH $87^{\circ}54'36''$ WEST, A DISTANCE OF 612.13 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 31, NORTH $89^{\circ}33'24''$ WEST, A DISTANCE OF 350.18 FEET;

THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF BEVERLY ROAD, AS RECORDED DECEMBER 18, 1956, PER DOCUMENT NO. 16 783 799, THE FOLLOWING FOUR COURSES:

- (1) NORTH $19^{\circ}28'22''$ WEST, A DISTANCE OF 93.54 FEET;
- (2) A DISTANCE OF 379.80 FEET, ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 1087.92 FEET, AND WHOSE CHORD OF 377.87 FEET BEARS NORTH $9^{\circ}28'19''$ WEST;
- (3) NORTH $7^{\circ}32'23''$ WEST, A DISTANCE OF 178.10 FEET;
- (4) NORTH $89^{\circ}28'14''$ WEST, A DISTANCE OF 33.00 FEET;

THENCE ALONG THE WEST LINE OF THE EAST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 31, NORTH $0^{\circ}31'46''$ EAST, A DISTANCE OF 1997.96 FEET;

THENCE ALONG THE WEST LINE OF THE EAST $\frac{1}{2}$ OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 31, NORTH $0^{\circ}25'04''$ EAST, A DISTANCE OF 2432.02 FEET;

THENCE ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD (ROUTE 72), AS PER DOCUMENTS: NO. 12 079 013, RECORDED NOVEMBER 8, 1937, NO. 12 284 905, RECORDED MARCH 20, 1939, NO. 12 309 896, RECORDED MAY 10, 1939, NO. 12 647 599, RECORDED MARCH 27, 1941, AND NO. 12 288, RECORDED FEBRUARY 20, 1939, THE FOLLOWING FOUR COURSES:

- (1) A DISTANCE OF 189.90 FEET, ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 10,257.06 FEET, AND WHOSE CHORD OF 189.90 FEET BEARS SOUTH $82^{\circ}59'46''$ EAST;
- (2) SOUTH $83^{\circ}31'35''$ EAST, A DISTANCE OF 2317.28 FEET;
- (3) A DISTANCE OF 2532.01 FEET, ALONG AN ARC OF A CIRCLE, CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 9965.06 FEET, AND WHOSE CHORD OF 2525.20 FEET BEARS SOUTH $76^{\circ}14'50''$ EAST;
- (4) SOUTH $68^{\circ}58'05''$ EAST, A DISTANCE OF 1233.00 FEET;

THENCE ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF ELGIN, JOLIET AND EASTERN RAILROAD, AS RECORDED JULY 1, 1889, PER DOCUMENT NO. 1 123 185, SOUTH $11^{\circ}12'47''$ WEST, A DISTANCE OF 3844.25 FEET;
THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST $\frac{1}{4}$, OF SAID SECTION 32, NORTH $89^{\circ}42'33''$ WEST, A DISTANCE OF 1425.69 FEET TO THE POINT OF BEGINNING;

AND ALSO:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 32;
THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 32, NORTH $89^{\circ}42'33''$ WEST, A DISTANCE OF 1111.55 FEET TO THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID ELGIN, JOLIET AND EASTERN RAILROAD, NORTH $11^{\circ}12'47''$ EAST, A DISTANCE OF 3807.64 FEET;

THENCE ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD (ROUTE 72), SOUTH $68^{\circ}58'05''$ EAST, A DISTANCE OF 1336.48 FEET;

THENCE SOUTH $0^{\circ}07'09''$ WEST, A DISTANCE OF 178.58 FEET;

THENCE SOUTH $89^{\circ}52'51''$ EAST, A DISTANCE OF 185.00 FEET;

THENCE NORTH $0^{\circ}07'09''$ EAST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH $89^{\circ}52'51''$ EAST, A DISTANCE OF 141.20 FEET;

THENCE NORTH $01^{\circ}07'09''$ EAST, A DISTANCE OF 41.94 FEET;

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD, SOUTH $68^{\circ}58'05''$ EAST, A DISTANCE OF 135.51 FEET;

THENCE AS MONUMENTED AND OCCUPIED, SOUTH $0^{\circ}07'09''$ WEST, A DISTANCE OF 1769.21 FEET;

THENCE ALONG A LINE PARALLEL WITH, AND 1323.61 FEET NORTH OF THE SOUTH LINE, OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, SOUTH $89^{\circ}44'52''$ EAST, A DISTANCE OF 1210.76 FEET;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 59 (NEW SUTTON ROAD), AS RECORDED AUGUST 30, 1934, PER DOCUMENT NO. 11 451 859, A DISTANCE OF 83.94 FEET ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 1458.06 FEET, AND WHOSE CHORD OF 83.93 FEET BEARS SOUTH $18^{\circ}01'24''$ WEST;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF TOLLWAY I-90, RECORDED MAY 13, 1957 PER DOCUMENT NO. 16 902 251, AS MONUMENTED AND OCCUPIED, THE FOLLOWING TEN COURSES:

- (1) SOUTH $32^{\circ}03'22''$ WEST, A DISTANCE OF 312.00 FEET;
- (2) SOUTH $40^{\circ}38'44''$ WEST, A DISTANCE OF 517.39 FEET;
- (3) NORTH $49^{\circ}12'41''$ WEST, A DISTANCE OF 70.00 FEET;
- (4) NORTH $89^{\circ}52'22''$ WEST, A DISTANCE OF 635.00 FEET;
- (5) SOUTH $0^{\circ}28'49''$ WEST, A DISTANCE OF 237.60 FEET;
- (6) SOUTH $50^{\circ}39'29''$ WEST, A DISTANCE OF 501.20 FEET;
- (7) SOUTH $74^{\circ}15'09''$ WEST, A DISTANCE OF 472.21 FEET;
- (8) NORTH $89^{\circ}44'13''$ WEST, A DISTANCE OF 1513.85 FEET;
- (9) NORTH $0^{\circ}23'47''$ EAST, A DISTANCE OF 15.00 FEET;
- (10) NORTH $89^{\circ}44'13''$ WEST, A DISTANCE OF 81.60 FEET;

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF ELGIN, JOLIET AND EASTERN RAILROAD, NORTH $11^{\circ}12'47''$ EAST, A DISTANCE OF 44.75 FEET, TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT N

CONTRACTS IN EXISTENCE OR TO BE LET BY THE DEVELOPER¹

CONSULTANT

SCOPE OF WORK

Barton-Aschman	Traffic Analysis and Consultation
Ludlow & Associates	Surveying
Tornrose Campbell	Civil Engineering (including civil engineering on Phase II Site which supports Phase I Development)
STS Consultants	Geotechnical Analysis
Hey & Associates	Environmental Studies
Schal Associates	Value Engineering
Donohue Associates ²	Civil Engineering/Planning/Landscape (including civil engineering, planning and landscape on Phase II Site which supports Phase I Development)
Perkins & Will	Master Planning ³ 788 Acres
Homart Development Co.	Project Coordinator

- 1 The Village reserves the right to confirm that dollar amounts expended under contracts relate to property assembly costs, site preparation costs, and costs of construction of the Public Improvements, all as defined in the Act.
- 2 Includes subcontract to Johnson, Johnson & Roy.
- 3 Does not include costs for master planning of Phase I Site (200 acre), which costs are not deemed to be a "Project Cost".

EXHIBIT O

PROPERTY ASSEMBLY COSTS PAID, INCURRED
OR KNOWN AS OF THE DATE OF THIS AGREEMENT

I. CONSULTANT COSTS

<u>CONSULTANT</u>	<u>SCOPE OF WORK</u> ¹	<u>EDA COSTS</u> ²
Ludlow	ALTA Survey ³	
Coldwell Banker		
Commercial	Brokerage	
Tornrose Campbell	Preliminary Civil	
STS Consultants	Preliminary Soils	*
Rudnick & Wolfe	Property Assemblage, Zoning, Environmental, Economic Development	
Subtotal		\$1,550,000.00

II. PURCHASE PRICE

	<u>EDA COSTS</u>
(1) Origer Estate	*
(2) Origer Children	
(3) Studz	
(4) Nederlander:	
73 acre parcel ⁴	
148 acre parcel ⁴	
(5) Watson ⁵	
Subtotal	\$87,368,618.00

III. TITLE AND SEARCHES³

	<u>EDA COSTS</u> ²
(1) Origer Estate:	
(a) Title ⁶	*
(b) Searches	
(2) Origer Children:	
(a) Title ⁶	*
(b) Searches	
(3) Studz: Purchaser to receive a credit for:	
(a) Title ⁶	*
(b) Searches	

* Document on file. Confidentiality protected by Chapter 24, Section 207(s) of the Illinois Revised Statutes.

(4)	Nederlander; For both parcels:	
(a)	Title ⁶	*
(b)	Searches	
(5)	Watson: ⁵	
(a)	Title	*
(b)	Searches	
Subtotal		\$40,000.00

IV. ESCROW CHARGES³

EDA COSTS²

(1)	Origer Estate and Origer Children	*
(2)	Nederlander	
(3)	Studz	
Subtotal		\$5,000.00

- 1 Contracts are subject to execution of change orders.
- 2 Costs are estimated and are not intended to be final.
- 3 Subject to credits pursuant to Acquisition Contracts.
- 4 Provided the initial closing date is not extended. If the initial closing date is extended beyond June 29, 1990, Sears must deliver into the strict joint order escrow at Ticor Title Insurance Company an additional \$_____ per parcel, of which \$_____ per parcel will not be credited against the purchase price for each parcel.
- 5 Acquisition closed on September 7, 1989. All charges related to such closing have been paid in full.
- 6 This quote from Ticor Title Insurance Company is based on a title insurance premium of \$.40 per \$1,000.00 and a zoning 3.0 endorsement fee of \$.05 per \$1,000.00. No other endorsements are included in the quote, nor is the cost of reinsurance included.

* Document on file. Confidentiality protected by Chapter 24, Section 207(s) of the Illinois Revised Statutes.

EXHIBIT P

**PROJECT COSTS PAID OR INCURRED BY THE DEVELOPER
AS OF THE DATE OF THIS AGREEMENT IN CONNECTION WITH
THE CONSTRUCTION OF THE PUBLIC SITE IMPROVEMENTS**

I. PROJECT COSTS PAID OR INCURRED BY THE DEVELOPER

<u>CONSULTANT</u>	<u>EDA COSTS</u>¹	<u>DESCRIPTION OF WORK</u>
<u>Planning</u>		
Barton-Aschman	\$278,332	Traffic impact analysis; roadway design
Perkins & Will	<u>244,152</u>	Site and master planning
Subtotal	<u>\$522,484</u>	
<u>Engineering</u>		
Ludlow & Associates	\$173,000	Surveying; topographic studies
STS Consultants	97,742	Geotechnical studies
Tornrose Campbell	65,328	Utility design
Hey & Associates	152,080	Environmental studies
Chicago Area Transport- ation Study	2,248	Traffic data
Subtotal	<u>\$490,398</u>	

- 1 Costs are not intended to be final; additional Project Costs are expected to be incurred.

Mayor
MICHAEL J. O'MALLEY
Village Clerk
VIRGINIA M. HAYTER
Village Manager
PETER T. BURCHARD



Board of Trustees
BRUCE C. LIND
WILLIAM D. McLEOD
SUSAN H. KENLEY
MICHAEL D. FRIESEN
RICHARD A. COCHRAN
LOUIS G. DESRUISSEUX

March 19, 1990

Mr. Michael Bozic
Chairman and Chief Executive Officer
Sears Merchandise Group
Sears Tower
Chicago, IL 60684

**Re: Letter of Clarification of Intent of Village Board Amendment of
February 26, 1990 Prior to Approval of Economic Development
Agreement By and Between The Village of Hoffman Estates and
Sears, Roebuck and Co.**

Dear Mr. Bozic:

On February 26, 1990, the Village Board of the Village of Hoffman Estates approved, by Ordinance No. 2161-1990, the above referenced Economic Development Agreement. Prior to such approval, amendments to Sections 3.1-(e)-(2), 4.2(a) and 4.2(b) were made which stated that in regard to service contracts (Exhibit "N"), property assembly costs (Exhibit "O") and costs of construction activities (Exhibit "P"), that "both the Village and Sears agree that Chapman and Cutler as Bond Counsel for the Village, will determine what costs. . . qualify as Project costs under the Act".

In order to clarify the scope of such determination, please be advised that, after discussion with Corporation Counsel and the Board of Trustees, I can represent that the intent of such amendment was not to have Chapman and Cutler determine specific dollar amounts of expenditures or the reasonableness or necessity of any given expenditure. Rather, the Village's intent is to make Chapman and Cutler the party responsible for determining if the amounts payable under such service contracts, as well as the amount payable as "property

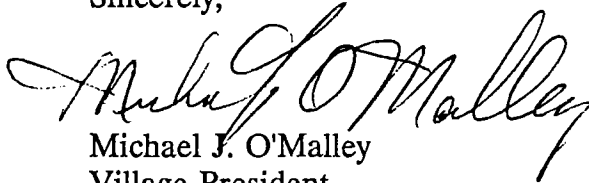
assembly costs", as "site preparation costs", and as costs of construction of the Public Improvements (as defined in the Agreement), qualify as "economic development project costs" under the State Statute referenced as the "Act" in the Agreement.

Specifically, with respect to Exhibit "N", it is understood that, to the extent service contracts relate to construction activities which do not constitute "site preparation costs" as that term is defined in the Act, or costs of construction of Public Improvements as that term is defined in the Agreement, then to such extent the costs incurred under such service contracts shall not be deemed to qualify under the Act and under the Agreement as a "Project Cost".

However, it remains the Village's intention to have the prorated share of the "qualified" portions of service contracts, property assembly costs, site preparation costs and costs of construction of the Public Improvements and to have the reasonableness or necessity of the "qualified" portions of service contracts, property assembly costs, site preparation costs and cost of construction of the Public Improvements determined under the provisions of Sections 4.3, 4.4 and 17.5 of the Agreement.

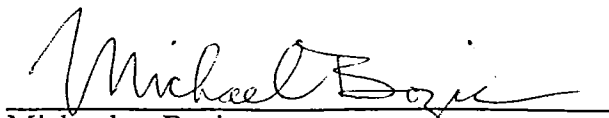
If this is your understanding and agreement, please sign one copy and return.

Sincerely,


Michael J. O'Malley
Village President

MJO/ds

Understood and Agreed to:


Michael Bozic
Chairman and Chief Executive Officer
Sears Merchandise Group

